The Governance of England:

OTHERWISE CALLED

The Difference between an Absolute and a Limited Monarchy

By SIR JOHN FORTESCUE, Kt.

SOMETIME CHIEF JUSTICE OF THE KING'S BENCH

A Revised Text

EDITED

WITH INTRODUCTION, NOTES, AND APPENDICES

BY

CHARLES PLUMMER, M.A.

Fellow and Chaplain of Corpus Christi College, Oxford

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FORTESCUE

ON

The Governance of England

PLUMMER

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Φαντασία πολιτείας ἰσονόμου, κατ' ἰσότητα καὶ ἰσηγορίαν διοικουμένης, καὶ βασιλείας τιμώσης πάντων μάλιστα τὴν ἐλευθερίαν τῶν ἀρχομένων.—MARCUS AURELIUS ANTONINUS.

'The idea of a polity in which there is the same law for all, a polity administered with regard to equal rights and equal freedom of speech, and the idea of a kingly government which respects most of all the liberty of the governed.'—LONG'S TRANSLATION.

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Preface.

THE work here presented to the reader has been three times previously printed; twice, in 1714 and 1719 by Mr., afterwards Sir John, Fortescue-Aland, who ultimately became Lord Fortescue of Credan, and once by Lord Clermont in his edition of the collected works of Fortescue[1]. Of these editions the two first have become very scarce, while the third is only printed for private circulation. Of all three the value is very much impaired by the fact that the text is based on a comparatively late manuscript; while no attempt has ever been made to bring out the historical significance and relations of the treatise. It is hoped therefore that the appearance of the present edition, which aims at supplying these deficiencies, will not be considered to be without justification.

Had the treatise 'On the Governance of England' no other claims on our attention, it would deserve consideration as the earliest treatise on the English Constitution written in the English language. But as a matter of fact, its historical interest is very high indeed; far higher, I venture to think, than that of the author's better-known Latin treatise *De Laudibus Legum Angliæ*. We here see that

[1] From two notices in Hearne's Collections (ed. Doble, i. 46, 154) it would appear that Lord Fortescue of Credan at one time entertained the idea, ultimately carried out by Lord Clermont, of printing a collected edition of the works of their ancestor.

Fortescue, while remaining true to those liberal principles of government which he had previously enunciated, was yet keenly sensible of the evils of Lancastrian rule, and that in the various remedies suggested by him, which have for their object the strengthening of the powers of the Crown and the reduction of the influence of the nobles, he was, consciously or unconsciously, helping to prepare the way for the New Monarchy.

This connexion of the work with the history of the time I have endeavoured to draw out, by bringing together from contemporary authorities whatever seemed to illustrate the meaning of the author. The closeness of the connexion is shown by the fact, more than once pointed out in the notes to the present edition, that the language of Fortescue is often identical with that of the public documents of the period. And this in turn illustrates another point of some importance to which I have also drawn attention; the fact namely that Fortescue, first of mediæval political philosophers, based his reasonings mainly on observation of existing constitutions, instead of merely copying or commenting on Aristotle.

It follows from this that the inspiration which Fortescue derived from literary sources is subordinate in importance to that which he drew from the practical lessons of history and politics. But I have endeavoured to illustrate this point also. The four works of which Fortescue seems to have made most use are: the *De Regimine Principum* which goes under the name of St. Thomas Aquinas, though only a portion of it is by him; the treatise with the same title by Ægidius Romanus; the *De Morali Principum Institutione* of Vincent of Beauvais; and the *Compendium Morale* of Roger of Waltham. The first two works have been often printed, and are more or less well known; the two last exist only in manuscript. It has added interest to my study of Vincent of Beauvais' treatise that I have been

able to read it in the very manuscript used by Fortescue himself. The *Compendium Morale* of Roger of Waltham I think I may almost claim to have discovered; for though it is mentioned by Leland and his copyists, it is clear that they cannot have had much acquaintance with its contents, otherwise they would not have fixed the author's *floruit* as they have done. Of Aristotle, except so far as Aristotelian doctrines are embodied in the above-named works, I have shown that Fortescue knew nothing beyond the collection of quotations which goes by the name of the *Auctoritates Aristotelis*.

One of the most important sources from which an author can be illustrated is himself. From this point of view I am under the greatest obligations to the collection of Fortescue's Works printed—I wish I could have added, published—by his descendant, Lord Clermont. It is I trust in no captious spirit that I have occasionally pointed out what seem to me omissions and mistakes on the part of the noble editor. If all representatives of historic houses would imitate the example set by Lord Clermont, light would be thrown on many a dark corner of English history. I have also derived much assistance from the scholarly notes on Fortescue's longest work, the *De Naturâ Legis Naturæ*, with which Lord Carlingford, then Mr. Chichester Fortescue, enriched his brother's edition of that treatise.

In regard to the Appendices, the first and third are merely reprints from older and completer MSS. of documents already given by Lord Clermont; the second and fourth are new, though I have given reasons for believing that the last is a fragment of a treatise of which other fragments have been printed by Lord Clermont. From the second a brief extract was printed by Sir Henry Ellis in his Historical Letters, though without recognising either its author or its importance. It is however, as I have shown, closely connected with the present work, the

historical bearing and significance of which it illustrates in a very striking manner.

In reference to the life and times of Fortescue I have been able to glean some facts which have escaped previous biographers. These are derived chiefly from French and Burgundian sources. I cannot help thinking that the value of these authorities for English history, though long ago pointed out by Mr. Kirk in his History of Charles the Bold, has hardly been sufficiently appreciated by English historians; while if the archives of France contain many more documents bearing on English history equal in importance to those printed by Mdlle. Dupont in her edition of Waurin and by M. Quicherat in his edition of Basin (both published under the auspices of the Société de l'Histoire de France), much light may be hoped for from that quarter. A visit to the Record Office enabled me to clear up some mistakes and obscurities in regard to Fortescue's landed property.

It will be seen that I have edited this work from a historical and not from a philological point of view. Of the MSS. employed in the formation of the text a sufficient account will be found in the Introduction. A few words may here be said as to the manner in which I have dealt with them. I have, I believe, noted all cases in which I have departed from the reading of the MS. on which I have based my text. In other instances I have only given such various readings as seemed to me to have some historical or philological interest, or to be of importance as illustrating the relations of the MSS. to one another. *Forms* of words which appeared to me worthy of notice I have frequently included in the Glossary, with an indication of the MS. from which they are taken. Stops and capitals are introduced in conformity with modern usage; quotations have been indicated, as in MS. Y, by the use of Gothic letters. I have not attempted to distinguish between Early English þ and Middle-English *y*, as they are sometimes called;

they are used promiscuously, they fade imperceptibly into one another, and after all the *y* is only þ badly written. I have printed þ throughout. In regard to the junction and separation of words the MS. has been closely followed. The only exception is in the case of the indefinite article *a* or *an*, which in the MS. is sometimes joined with and sometimes separated from the word to which it belongs; I have always separated it. In the case of words just hovering on the verge of becoming compounds, and neither completely joined nor completely separated in the MS., I have followed the example of Professor Earle and divided the elements by a half-space, objecting with him to the use of hyphens as a purely modern invention. In the MS. the word *and* is sometimes abbreviated, sometimes written in full; it is here always printed in full. With these exceptions the peculiarities of the MS. followed are, I believe, faithfully reproduced, extended contractions being marked in the usual way by italics.

The Glossarial Index is merely intended to give help to those who, reading the text for historical purposes, may be puzzled by Middle-English forms or meanings. It makes no pretensions to any philological value.

I trust that this work may prove useful both to teachers and students of history in Oxford and elsewhere. But my main object has been to illustrate my author, and that is the point of view from which I would desire to be judged.

In a body of notes ranging over so many subjects, some of them lying far outside the sphere of my ordinary studies, it is hardly possible that there should not be slips and blunders. For the correction of these, whether publicly or privately, I shall always be grateful; and I should wish to adopt as my own the words of one of the most unselfish labourers in the field of learning, Hermann Ebel: 'opprobret nobis, qui volet, modo corrigat.'

It only remains for me to pay the tribute of my hearty

thanks in the many quarters where that tribute is due. I have to thank the Delegates of the Clarendon Press for the generous confidence with which they accepted the work of an untried hand, and for the liberality with which they permitted an extension of its scope much beyond what was originally contemplated. To the Lord Bishop of Chester I am under special obligations; who not only encouraged me to undertake the work, but both as a Delegate of the Press and in his private capacity helped it forward at a great expenditure of trouble to himself; to his published writings I, in common with all students of history, owe a debt of gratitude which can never be adequately expressed. To the Rev. C. W. Boase, Fellow of Exeter College, I am indebted for constant encouragement and assistance; nor am I the first who has profited by his wealth of historical learning; while Professor Skeat gave me much kind help and advice with reference to points of philology. Mr. Edward Edwards. the well-known and accomplished author of the Life of Ralegh, took more trouble than I like to think of, in the endeavour to clear up some points in which I was interested. That his researches were not always crowned with success does not diminish my sense of gratitude. The help which I have received in regard to special points is acknowledged in the book itself. I am indebted to Lord Calthorpe for the facilities which he afforded me in consulting the Yelverton MS., to Mr. Henry Bradshaw for similar favours in regard to the Cambridge MS., and to the Master and Fellows of Trinity College, Cambridge, for the loan of their MS. containing the *Epitome;* while to the Provost and Fellows of Queen's College, Oxford, my thanks are due for allowing me even a larger use of their valuable library than that which they so liberally accord to all Graduates. I have to thank Mr. W. D. Selby, who directed my researches at the Record Office; and Mr. E. J. L. Scott, of the Department of MSS., who did me the like service at the British

Museum. At the Bodleian I received constant help from Mr. Madan the Sub-Librarian, while Mr. Macray was an unfailing oracle on all points of palæography. I should like also to thank generally the officials of all the three institutions which I have named, for their unfailing courtesy, attention, and helpfulness. To the many friends who have helped me, if indirectly, yet very really by their sympathy and the interest they have taken in my work, I would also here return my grateful thanks. To one of them this work would probably have been dedicated, were it not that dedications are said to be somewhat out of date in this enlightened age.

C. C. C., Oxon.,
July 29, 1885.

ERRATA.

p. 41, l. 13, *for* Chief Justice of England, *read* Chief Justice of the King's Bench.

p. 64, note 5; p. 65, note 2; p. 215, l. 13 from bottom, *for* Ormond, *read* Ormonde.

p. 81, l. 22, *for* trace, *read* tract.

p. 84, l. 10, *for* 1464, *read* 1463.

p. 249, l. 6 from bottom, *for* de, *read* le.

p. 263, l. 7 from bottom, *for* sports, *read* spots.

p. 349, margin, insert *his* after *Warrewic.*

List of Authorities.

NOTE.—As a general rule the authorities referred to will be easily identified; only those are given here as to which any doubt might be likely to arise.—[C.S. = Camden Society. R.S. = Rolls Series.]

Ægidius Romanus, *De Regimine Principum.* English translation in MS. Digby 233.

Blakman, in Hearne's Otterbourne.

Burton, History of Scotland. Cabinet edition.

Chastellain, ed. Kervyn de Lettenhove.

Continuator of Croyland, in Fulman's Scriptores Veteres, vol. i. fol. 1684.

De Coussy, ed. Buchon.

English Chronicle, ed. Davies. C.S.

Fabyan, ed. Ellis, 4to.

Fortescue's Works, etc., ed. Clermont.

The writings of Fortescue occupy the first volume of a work in two volumes by Lord Clermont, with the title 'Sir John Fortescue and his Descendants;' the Family History forming the second volume. The latter was however subsequently reprinted as a substantive work, and it is always this second edition which is cited under the title 'Family History.' The Legal Judgements of Sir John Fortescue will be found at the end of his Works, with a separate pagination. Of his works, the *De Naturâ Legis Naturæ* is cited for shortness as N.L.N., the 'Governance of England' as the *Monarchia.*

Froude, History of England. Cabinet Edition.

Gregory's Chronicle, in Gairdner's 'Collections of a London Citizen.' C.S.

Hall's Chronicle, 4to., ed. 1809.

Hallam, Constitutional History. Library Edition, 1854.

„ Literature of Europe. Cabinet Edition.

„ Middle Ages. Cabinet Edition, 1872.

Hardyng, ed. Ellis. 4to.

Hearne's Fragment, in Hearne's 'Sprotti Chronica.'

Household, Ordinances of the Royal, published by the Society of Antiquaries. (Cited as 'Ordinances, &c.')

Martineau, History of the Peace. 4 vols. 8vo., 1877–8.

Monstrelet. 3 vols. fol., 1595.

Paston Letters, ed. Gairdner.

Political Songs, ed. Wright. C.S.

„ „ R.S.

Proceedings and Ordinances of the Privy Council, ed. Sir Harris Nicolas. (Cited as P. P. C.)

Pseudo-Aquinas. Under this title is cited that part of the *De Regimine Principum* which is not by St. Thomas Aquinas.

Rede's Chronicle, in MS. Rawl. C. 398.

Rymer's Fœdera. Original Edition, 1704–1735.

Stowe's Annals, ed. 1631, fol.

Stubbs' Constitutional History. Cabinet Edition. (Cited as S. C. H.)

Turner, Sharon, History of England during the Middle Ages. 8vo. Edition.

Vincent of Beauvais, *De Morali Principum Institutione*, in MS. Rawl. C. 398.

Waltham, Roger of, *Compendium Morale*, in MS. Laud. Misc. 616.

Wars of the English in France, Letters and Papers illustrative of the, ed. Stevenson. R. S. (Cited as 'English in France.')

Waurin, Anchiennes Chroniques, ed. Mdlle. Dupont. (Société de l'Histoire de France.)

Whethamstede. R.S.

Worcester, William, Collections, and Annals, in Wars of the English in France, q. v.

Chronological Table of the Life, Times, and Writings of Sir John Fortescue.

? 1390–1400. Birth of Fortescue.

1399. *Oct.* Accession of Henry IV.

1413. *March.* Accession of Henry V.

1422. *Sept.* Accession of Henry VI.

1425, 1426, and 1429. Fortescue Governor of Lincoln's Inn.

1429 or 1430. Fortescue becomes a Sergeant-at-Law.

1429. *Nov.* 6. Coronation of Henry VI at Westminster.

1431. *Dec.* 17. „ „ at Paris.

1435. *Aug.* Conference of Arras.

? 1435–6. Fortescue marries Elizabeth or Isabella Jamyss.

1435–6. Fortescue acquires lands in Devonshire by grant of his brother Henry.

1439. Conference of Calais.

1440. *June.* Gloucester's manifesto on the release of the Duke of Orleans.

1440 and 1441. Fortescue acts as Judge of Assize on the Norfolk circuit.

1441. *Easter Term.* Fortescue made a King's Sergeant.

— Grant to Fortescue and his wife of lands at Philip's Norton.

1442. *Jan.* Fortescue made Chief Justice of the King's Bench.

Feb. Grant to Fortescue of a tun of wine annually.

Oct. Fortescue ordered to certify the Council as to certain indictments brought against the Abbot of Tower Hill.

Fortescue ordered to commit to bail certain adherents of Sir William Boneville.

1442 or 1443. Fortescue knighted.

1443. *Jan.* or *Feb.* Fortescue sent on a special commission into Norfolk.

March 4. Letter of thanks from the Council to Fortescue.

— 14. Fortescue ordered to send to the Council a list of persons eligible for the offices of J.P. and Sheriff in Norfolk.

— 23. Fortescue makes his report to the Council on the affairs of Norfolk.

April 3 and *May* 3. Fortescue attends the Privy Council.

May 8. Warrant ordered for the payment of 50 marks to Fortescue.

May 10. Fortescue summoned to advise the Council with reference to the attacks on Cardinal Kemp's estates.

— 11. Fortescue makes his report to the Council.

— 18. Fortescue sent on a special commission into Yorkshire.

May. Grant to Fortescue of a tun of wine annually.

July 11. Fortescue attends the Privy Council.

Confirmation to Fortescue and his wife of the lands at Philip's Norton.

1444. *Jan.* Fortescue ill of sciatica, and unable to go on circuit.

1445. *Feb.*–1455. *July*. Fortescue a trier of petitions in Parliament.

1445. *April* 22. Marriage of Henry VI with Margaret of Anjou.

1447. *Feb.* 23. Death of Gloucester.

March. Fortescue receives an addition of £40 to his salary.

April 11. Death of Cardinal Beaufort.

Oct. Fortescue and his wife receive letters of confraternity from Christ Church, Canterbury.

Fortescue refuses to deliver Thomas Kerver out of Wallingford Castle.

1447–8. Fortescue arbitrates between the Chapter and Corporation of Exeter.

1450. *Jan.–March*. Fortescue acts as spokesman of the Judges in relation to the trial of Suffolk.

May. Murder of Suffolk. Rising of Cade.

Aug. Fortescue sent on a special commission into Kent.

Sept. The Duke of York comes over from Ireland.

1451. *May–June.* Fortescue expecting to be attacked in his house.

1452. *Oct.* Fortescue acquires the manor of Geddynghall, and other lands in Suffolk.

1453. *July* 6. The King falls ill at Clarendon.

Oct. 13. Birth of Prince Edward of Lancaster.

1454. *Feb.* Fortescue delivers the opinion of the Judges on the case of Thorpe.

March 22. Death of Kemp.

April 3. York appointed Protector.

June 9. Edward of Lancaster created Prince of Wales.

Dec. 25. Recovery of the King.

Fortescue divests himself of his lands in Devonshire in favour of his son Martin.

1455. *May* 22. First battle of St. Alban's. Death of Fortescue's younger brother, Sir Richard Fortescue.

Oct. The King falls ill again at Hertford.

Nov. 19. York reappointed Protector.

1456. *Feb.* The King recovers.

Feb. 25. York dismissed from the Protectorship.

Feb. Fortescue arbitrates between Sir John Fastolf and Sir Philip Wentworth.

March. Fortescue consulted by the Council with reference to the Sheriffdom of Lincolnshire.

May. Fortescue sits on a special commission at the Guildhall.

Fortescue acquires the reversion of the manor of Ebrington.

1457. *May.* Fortescue acquires lands at Holbeton, Devon.

1458. *March* 25. Peace made between the Lancastrians and Yorkists.

Margaret of Anjou instigates Charles VII to send French troops to England.

1459. *Sept.* 23. Battle of Bloreheath.

Oct. 12. Dispersal of the Yorkists at Ludlow.

Nov. Parliament of Coventry. Activity of Fortescue.

Dec. 7. Attainder of the Yorkists.

Fortescue appointed a feoffee for executing the King's will.

1460. *Feb.* Negotiations of Margaret of Anjou with France.

July 10. Battle of Northampton.

Oct. The Duke of York claims the crown.

Oct. Margaret and the Prince in Wales.

Dec. 31. Battle of Wakefield.

1461. *Jan.* Negotiations of Margaret and the Dowager Queen of Scotland at Lincluden.

Jan. 20. Bond of Lancastrian lords to induce Henry VI to accept the terms agreed upon.

Feb. 3. Battle of Mortimer's Cross.

— 17. Second battle of St. Alban's.

? Fortescue joins the Lancastrian forces.

March 4. Edward IV proclaimed.

— 29. Fortescue present at the battle of Towton.

The Lancastrians take refuge in Scotland.

April 25. Agreement of the Lancastrians to surrender Berwick to the Scots.

May. Berwick full of Scots. Carlisle besieged by the Scots. The siege raised by Montague.

June 26. Fortescue and others 'rear war' against Edward IV at Ryton and Brancepeth.

— 28. Coronation of Edward IV.

July 22. Death of Charles VII of France.

1462. *Feb.* Lancastrian plots for invading England.

Feb. 20. Execution of the Earl of Oxford.

June 1461–*March* 1462. Somerset and Hungerford negotiate on the Continent in behalf of the Lancastrian cause.

1462. *March.* Somerset and Hungerford return to Scotland. A fleet for invading England assembles in the Seine.

April. Margaret and Prince Edward go to the Continent.

June 28. Treaty signed between Margaret and Louis XI.

Summer. Negotiations of the Scots with Edward IV.

— The Northern castles lost by the Lancastrians.

Sept. Warwick defeats the invading fleet.

Oct. Margaret returns from France and recovers the Northern castles; is joined by Henry VI in Northumberland.

Nov. Henry VI and Margaret retire to Scotland.

Dec. 24. Bamburgh and Dunstanburgh surrender, and Somerset submits to Edward IV.

1463. *Jan.* 6. Alnwick falls.

Before *Apr.* 29. Bamburgh and two other castles recovered by the Lancastrians.

May. Alnwick goes over to the Lancastrian side.

June. Henry VI and Margaret at Bamburgh.

The Lancastrians dispersed by Warwick.

Henry and Margaret retire to Scotland.

July. Margaret, Prince Edward, and Fortescue go to the Continent.

Sept. 1–2. Interview of Margaret with Philip the Good at St. Pol.

The Lancastrian exiles retire to St. Mighel in Barrois. Negotiations with foreign courts.

Dec. Somerset returns to the Lancastrian allegiance.

1461–1463. Fortescue writes the 'De Naturâ Legis Naturæ,' and various tracts on the succession question.

1464. *Jan.* Henry VI at Edinburgh.

Spring. Norham and Skipton in Craven captured by the Lancastrians. Lancastrian rising in Lancashire and Cheshire.

March. Henry VI at Bamburgh.

April 25. Battle of Hedgeley Moor.

May 1. Edward IV privately married to Elizabeth Wydville.

— 8. Battle of Hexham.

— 15. Execution of Somerset.

— 27. Execution of Hungerford.

Henry VI retires to Scotland.

June. Surrender of Alnwick and Dunstanburgh. Capture of Bamburgh.

Before *Dec.* Fortescue goes to Paris.

Dec. Letter of Fortescue to Ormonde. Henry is safe and out of the hands of his rebels.

1465. *March.* ? Henry VI at Edinburgh.

July. Henry VI captured in Lancashire and sent to the Tower.

Summer. Fortescue goes to Paris.

War of the Public Weal in France.

1467. *June.* Death of Philip the Good.

1468. *Jan.* 16. Letter of the French Ambassador to Louis XI on the attitude of Warwick.

July 3. Marriage of Charles the Bold with Margaret of York.

Summer. Jasper Tudor sent into Wales. Defeated by Lord Herbert. Threatened invasion of England by Margaret.

1469. *June.* Rising of Robin of Redesdale.

July 26. Battle of Edgecote.

Aug. Edward IV a prisoner in the hands of the Nevilles.

Oct. Edward IV released, returns to London.

1468–1470. Fortescue writes the 'De Laudibus.'

1470. *March.* Insurrection of Sir Robert Welles. Battle of Stamford. Warwick and Clarence expelled from England.

July–Aug. Negotiations of Warwick and Margaret at Angers. **Memoranda drawn up by Fortescue on the political situation.**

Sept. 13. Warwick lands at Dartmouth.

Oct. 3. Flight of Edward IV.

— 5. Restoration of Henry VI. Warwick appointed Lieutenant.

Nov. 26. Meeting of Parliament.

1470–1471. Fortescue in the name of Prince Edward draws up a programme for the restored Lancastrian government.

1471. *March* 14. Edward IV lands at Ravenspur.

April 14. Battle of Barnet. Landing of Margaret, Prince Edward, and Fortescue at Weymouth.

May 4. Battle of Tewkesbury. Death of Prince Edward. Fortescue taken prisoner.

— 12. Attempt of the Bastard Falconbridge on London.

— 21. Death of Henry VI.

Oct. Fortescue's pardon passes the Great Seal.

Nov. 11. Death of Fortescue's only son, Martin.

(?) **Fortescue writes the Dialogue on Understanding and Faith.**

Oct. 1471–Oct. 1473. Fortescue writes the 'Declaration upon Certain Writings.'

1473. *Oct.* Fortescue's petition for restoration granted.

Nov. Dispute between Clarence and Gloucester.

1475. Invasion of France by Edward IV.

Release of Margaret of Anjou.

1476. *Feb.* Last notice of Fortescue.

1471–1476. Fortescue writes 'On the Governance of England.' (*Monarchia.*)

INTRODUCTION.

PART I.

Constitutional Sketch of the Lancastrian and Yorkist Period. (1399–1483.)

The fifteenth century opens in two of the principal countries of Europe with a revolution. On September 29, 1399, Richard II of England resigned the crown; the next day he was deposed on charges, which were taken as proved by common notoriety, and Henry IV was accepted in his place. On August 20, 1400, a section of the electors of the Holy Roman Empire by an equally summary process deposed their head, Wenzel king of Bohemia, and on the following day elected Rupert of the Palatinate in his stead. The fortunes of the two deposed monarchs had not been unconnected. Richard's first wife, Anne of Bohemia, was Wenzel's half-sister: and there is extant a letter from Wenzel to Richard, dated Sept. 24, 1397, in which he offers Richard help against his rebellious nobles, in return for similar offers made by Richard to himself[1]. The comparison is further worth making, because of the similarity of the charges which served to overthrow the two brothers-in-law.

Contemporary Revolution in England and the Empire.

Another comparison, which to students of English History is even better worth making, is the comparison between the revolution of 1399 and that of 1688. In both cases a great effort was made by the lawyers to preserve the formalities of the constitution, and to disguise by legal fictions

Comparison of the Revolutions of 1399 and 1688.

[1] Bekynton's Correspondence, I. lxi. 287–9.

Legal fictions.

what was in reality a breach of continuity: in both it was found necessary to pass over the immediate heir, so that Parliament had not merely, as in the case of Edward II, to claim the right of setting aside an unworthy king, but had implicitly to make the further claim to regulate the succession. So on both occasions probably many were carried by the course of events further along the path of revolution than they had intended. There were many who would gladly have seen Henry restored to his Duchy of Lancaster, and who were prepared heartily to support him in insisting that Richard should abandon his recent unconstitutional proceedings and return to his former mode of government, who yet felt themselves duped, when they found that he used the opportunity which they had given him to seat himself on the throne. So too there were many who were truly anxious that by means of the coming of the Prince of Orange the religion, laws, and liberties of England should be securely established in a free parliament, but who were disappointed when James II's pusillanimity paved the way for the elevation of his son-in-law to the crown. Both Henry and William came as the deliverers of a church which was threatened alike in doctrine and in property by a hostile form of religion, and of a nation perplexed and unsettled by a feverish attempt at arbitrary rule. In both cases questions of foreign policy had much to do with the result. But whereas at the close of the seventeenth century it was absolutely necessary for the salvation of Europe that England should be rescued from her subservience to France, at the close of the fourteenth century, on the other hand, France was by no means a dangerous power. It was her very weakness which tempted the unscrupulous and hypocritical aggression of Henry V. In both cases one of the chief advantages secured by the change of dynasty was that the royal authority was placed upon a proper footing, and seen to rest upon the consent of the nation. Richard II, like James II, had imbibed an entirely baseless view of English monarchy. The assertion that he had declared the laws to be in his own mouth and

Many were led further than they had intended.

Henry and William came as deliverers of Church and Nation.

Foreign policy.

Theory of royalty.

breast, is perhaps an exaggeration of his enemies: but if true, such language is no worse than James II's prattle about 'his sovereign authority, prerogative royal, and absolute power, which all his subjects were to obey without reserve[1].' By the change of dynasty theories of this kind were got rid of. Whether from choice or from necessity, the Lancastrians always professed to rule as constitutional kings.

Importance of the Lancastrian Period.

The Lancastrian period must always be of importance, as the period in which political liberty, at any rate in theory, reached its highest point during the middle ages. In fact the people acquired a larger measure of liberty than they were able to use: and the Commons, though bold in stating their grievances, were often helpless in devising remedies. In the words of Dr. Stubbs, 'Constitutional progress had outrun administrative order[2].' And this, combined with other causes which will be noticed later, made possible those disturbances which culminated in the civil war, and which wearied out the national patience, until even Tudor despotism seemed more tolerable than confusion.

Its advantages mainly prospective.

The advantages of Lancastrian rule were mainly prospective, and its chief claim on our gratitude is the fact that it supplied the precedents on which the constitutional party in the seventeenth century based their resistance to that caricature of Tudor despotism which the Stuarts attempted to perpetuate[3]. Viewed in relation to contemporary history it was premature; and it combines with the fruitless rising of the Hussites in Bohemia, with the abortive attempts of the Church to reform itself in the Councils of Pisa, Constance, and Basle, and with the equally abortive attempts to restore administrative and constitutional unity to the disintegrated German Empire, to stamp upon the fifteenth century that character of futility which has been so justly ascribed to it[4].

[1] Hallam, Const. Hist. iii. 71.
[2] Stubbs, Const. Hist. iii. 269.
[3] S. C. H. iii. 2–5; cf. Rogers' Gascoigne, pp. lviii. ff.
[4] 'Weak as is the fourteenth century, the fifteenth is weaker still; more *futile*, more bloody, more immoral.' S. C. H. ii. 624.

Key-note of Lancastrian policy, its appeal to national consent.

'The key-note of the Lancastrian policy,' says Dr. Stubbs, 'was struck by Archbishop Arundel in Henry IV's first Parliament, when he declared that Henry would be governed, not by his own "singular opinion, but by common advice, counsel, and consent[1]."' For the tendering of this 'common advice, counsel, and consent,' there were during this period three organs: 1. The Privy Council; 2. The Great Council; 3. The Parliament. On the character and composition of the Privy Council during the Lancastrian period, and the schemes of Fortescue for reorganizing it, I have spoken at length elsewhere[2]. On the Great Council also something will be found in the same place. Fortescue says nothing about it; perhaps, as I have there suggested, he disliked the institution as giving too much influence to the aristocracy. It forms however a characteristic feature of Lancastrian rule: for whereas in former reigns it appears as a mere survival of the old baronial parliaments, it now assumes special functions and a special position of its own, standing midway between the Privy Council and the Parliament, advising on matters which the former did not feel itself competent to settle, and preparing business for the meeting of the latter.

Privy Council.

Great Council.

Parliament.

On the composition and powers of Parliament Fortescue is also silent. Probably he considered them to be too firmly settled and too well known to require any commentary. The increase of the power of parliament under the Lancastrians is indeed too obvious to escape notice. 'Never before,' says Dr. Stubbs, 'and never again for more than two hundred years, were the Commons so strong as they were under Henry IV[3].'

Henry IV a Saviour of society.

Henry IV came to the throne as the representative of the 'possessioned' classes—to use a contemporary expression[4]. The crude socialism of the Lollards, as the barons saw, and as the Churchmen were careful to point out, threatened the foundations not merely of the Church, but of all property. It was the mission of Henry IV to put

[1] S. C. H. iii. 14.
[2] Notes to Chap. xv. below.
[3] S. C. H. iii. 72.
[4] Sharon Turner, iii. 105.

down these anarchical tendencies, to maintain vested interests and the existing state of things. He came, in modern phrase, as a saviour of society. Richard II, even in his best days, had not been very favourable to the interests of the propertied classes. He had not been forward in persecuting the Lollard, and he had wished to give freedom to the serf. These errors Henry was expected to correct.

His struggle to maintain himself.

The second great object of Henry's reign was the maintenance of himself on the throne and the continuance of his dynasty. From this point of view his reign was one long struggle against foreign and domestic enemies. His ultimate success is a proof of his great ability, but he was at no time free from anxiety. Hallam[1] speaks as if Henry IV's submission to the demands of the Commons was unaccountable. But the causes of his weakness are plain enough. He was weak through his want of title, weak through the promises by which he had bound himself to those whose aid had enabled him to win the crown, weak most of all through his want of money. It was this which gave the Commons their opportunity, it was this which caused all the disasters of the reign, the rebellion of the Percies, the ill-success of the Welsh campaigns, the wretched state of Ireland, the danger of Calais. The most 'exquisite means'—to use Fortescue's phrase—of raising money were resorted to; the constitutional character of some of them being, to say the least, questionable. This scarcity of money was due partly to the general want of confidence in the stability of the government which succeeded the brief enthusiasm in Henry's favour[2], and which

His poverty.

Reaction against him.

[1] Middle Ages, iii. 95.

[2] The letter of Philip Repingdon, the King's confessor, afterwards Bishop of Lincoln, dated May 4, 1401, is worthy of careful study in regard to this point. It is no mere rhetorical composition made up of phrases always kept in stock and not intended to fit any thought in particular; but it gives a genuine picture of the unsatisfactory state of the country, and of the deep disappointment felt at the way in which Henry had belied the (perhaps unreasonably high) expectations that had been formed of him. The author alludes in reference to Henry to Luke xxiv. 21, 'Nos autem sperabamus quia ipse esset redempturus Israel.' Bekynton's Correspondence, i. 151–4; cf. also Engl. Chron., ed. Davies, pp. 23, 28, 31; Hardyng, p. 371.

led people to hoard their gold and silver, so that not only was none forthcoming to meet the demands of the government, but capital, which ought to have been employed productively, was withdrawn from circulation, thus causing for the time a general diminution of the resources of the country. As soon as the accession of Henry V had shown that the dynasty was firmly established, abundant supplies were at once at his command[1]. Another cause was the disturbance of commerce, and consequent decline of the customs which followed the accession of Henry IV, owing partly to the unsettled state of the relations between England and France[2]. But the commons could not be got to believe in the poverty of the Government, and Henry did not dare to press for heavier taxation, for fear of increasing the already dangerous amount of discontent.

Disturbance of Commerce.

In this way passed what the chronicler Hall has justly called 'the unquiet time of King Henry the Fourth.' Harassed as he was by enemies foreign and domestic, deserted by many of the Lords, worried by the Commons, conscious that he had lost the love of his people, jealous and doubtful of his heir; with a divided court and broken health, which his enemies regarded as a judgement upon him, we can hardly refuse him our sympathy, although we may be of opinion that many of his troubles were self-caused. The interest which he is said to have taken in the solving of casuistical questions[3], shows the morbid lines on which his burdened conscience was wearily working. There is psychological if not historical truth in the story that he expired with the sigh that God alone knew by what right he had obtained the crown[4]. It was a curious choice that he should wish to be buried so near the man whose son he had discrowned, if not done to death.

The unquiet time of Henry IV.

[1] S. C. H. iii. 87.

[2] On this, and on the general decline of England's maritime power during the reigns of Henry IV and Henry VI, see notes to chaps. vi. xvii. below, and cf. S. C. H. iii. 65, note 1.

[3] Capgrave, Ill. Henr. pp. xxxiii, 109.

[4] Monstrelet, ii. f. 164 a, cited by Sharon Turner.

The accession of Henry V was by no means his first appearance either as a statesman or a warrior. He had served with distinction both in council and in the field, and had received in both capacities the thanks of Parliament. He had had his own policy, and his own party, who had urged him to claim the regency on the ground that his father was incapacitated by the disease from which he was suffering, which was said to be leprosy[1]. Accession of Henry V. His previous history.

The words which Shakespeare puts into the mouth of the dying Henry IV represent no more than the literal truth as to the advantages with which Henry V came to the crown: His advantages.

> 'To thee it shall descend with better quiet,
> Better opinion, better confirmation;
> For all the soil of the achievement goes
> With me into the earth[2].'

He reaped the benefit of an usurpation of which he had not shared the guilt. In accordance with these advantages he adopted a policy almost ostentatiously conciliatory. Even the unjustifiable attack on France may have been in part due to the same motive[3]. Only, if this was his idea, it was singularly falsified by the result. The causes which suspended for a time the outbreak of discord, did but make it the more intense when it came. And it is

[1] I am inclined to think that the above is the true account of a very obscure transaction. Henry Beaufort was said to have 'stired' the prince 'to have take ye gouvernance of yis Reume and (of) ye croune uppon hym;' (so I would construe the passage,) Rot. Parl. iv. 298 b; cf. Sharon Turner, ii. 362. Leprosy was a bar to the descent of real property; Hardy, Close Rolls, I. xxxi. In Rymer, xi. 635, is a certificate of the king's physicians that a certain person is not a leper, which is very interesting with reference to the nature of mediæval leprosy.

[2] Second Part of King Henry IV, Act iv. sc. 4.

[3] Cf. Ægidius Romanus, De Regimine Principum, III. ii. 15: 'Guerra enim exterior tollit seditiones et reddit cives magis unanimes et concordes. Exemplum enim hujus habemus in Romanis, quibus postquam defecerunt exteriora bella intra se ipsos bellare coeperunt.' 'For outward werre aleyȝþ inward strif, and makeþ citeseyns þe more acorded. Herof we hauen ensample of the Romayns, for whanne hem failede outward werre, thei bygunne to haue werre among hemself.' MS. Digby, 233, fo. 142 c. To this motive also Basin ascribes the warlike policy of Humphrey of Gloucester. He too cites the example of the Romans; i. 189.

His reign constitutionally unimportant.

only as developing causes, and those evil causes, which hardly began to act until he had passed away, that the reign of Henry V has any place in constitutional history. He did nothing permanent for the good of England, and the legacy which he left her was almost wholly evil: a false ideal of foreign conquest and aggression, a reckless contempt for the rights and feelings of other nations, and a restless incapacity for peace, in spite of exhaustion which had begun to show itself even in his own lifetime[1]. The history of the Southampton plot is characteristic of the haste with which the Lancastrians sought to stifle anything which raised the dangerous question of their title. The whole proceedings were so unconstitutional and irregular that they had to be specially legalized in the next Parliament[2]. Even more noteworthy is the fact that 'this conspiracy was the first spark of the flame which in the course of time consumed the two houses of Lancaster and York. Richard Earl of Cambridge was the father of Richard Duke of York, and grandfather of Edward IV[3].'

The Southampton Plot.

Beginning of the Wars of the Roses.

Henry VI.

But it was not till the house of Lancaster had proved in the person of Henry VI its entire incapacity to rule the kingdom, that the claims of the house of York were to be put forward openly. 'The troublous season of King Henry the Sixth,' to use once more the words of Hall, may be divided into three main periods: (1) from 1422 to 1437, the time of the minority proper[4]; (2) from 1437 to 1450, the time of Henry's own attempt at governing with the aid of those who may from time to time have had the ascendancy with him; (3) from Cade's rising in 1450 to 1461, the time of civil war. During the first of these periods the struggle is directly for preponderance in the council, mainly between the adherents of Gloucester and

Divisions of his reign.

[1] That Henry's aggression was disapproved by some even of his own subjects, see Gesta Henrici Quinti, p. xxxi; cf. Pecock, Repressor, p. 516.

[2] Rot. Parl. iv. 64 ff.: 'ut judicia . . . pro bonis et legalibus judiciis *haberentur*.'

[3] Ellis, Historical Letters, II. i. 44.

[4] Henry did not legally come of age till 1442, but from 1437 he began to influence the course of government. See Rot. Parl. v. 438–9, which document may be regarded as marking the transition from the first to the second period.

Beaufort. During the second period the struggle is rather for influence with the king, for possession of the royal ear. At first the contest as before is between Gloucester and Beaufort. Then, when they disappear, it is between Suffolk, Somerset, and Margaret on the one side, and York and his adherents on the other. Owing to the unhappy weakness of Henry both in will and intellect, no party could feel sure of maintaining their ascendancy with him, and of enjoying his support, unless they wholly monopolized his ear, and excluded all other influences[1]. . Hence all the unconstitutional attempts of Margaret and her partizans to keep first Gloucester and then York from the royal presence, which contributed largely to make the civil war inevitable. When that war broke out, the struggle for command of the king's person still continued; only it was no longer carried on merely by intrigue and party tactics, but depended for its issue upon the fate of battles.

Henry's marriage disastrous.

The marriage of Henry to Margaret of Anjou in 1445 was a great misfortune not only to England[2], but also to the house of Lancaster. By degrading the crown into an instrument of party warfare, she involved it in the ruin of the party of her choice[3]. The death of Gloucester in 1447 was another event which helped to bring matters to a crisis. Little good as he had done the house of Lancaster during his life, his death was a very severe blow to it. It cast an indelible suspicion on the existing government, and

Death of Gloucester and Beaufort.

[1] 'Pour ce que le roy Henry . . . n'a pas este . . . homme tel que il convenoit pour gouverner ung tel royaulme, chascun quy en a eu povoir s'est voullu enforchier d'en avoir le gouvernement,' &c. Waurin, ed. Dupont, ii. 282.

[2] Gascoigne is especially strong on this point; e.g. pp. 203 ff., 219 ff.

[3] Commynes remarks very justly on the disastrous effect of this partizan attitude of Margaret. She ought, he says, to have acted as mediator between the two parties, and not to have identified herself with either; Liv. vi. c. 12. Chastellain says of her: 'Tu as esté ennemye trop tost et trop amye à peu y penser; et sy te a porté grant grief ton hayr, et ton aimer peu de profit;' vii. 129 f. He makes her confess that she has been the ruin of England; ib. 102. Cf. Bacon, *Of Seditions and Troubles*: 'When the Authority of Princes is made but an Accessary to a Cause, and that there be other Bands that tie faster than the Band of Sovereignty, Kings begin to be put almost out of possession.' Cf. id. *Of Faction.*

it transferred the position of heir-presumptive and leader of the opposition to a man whose abilities were far greater than those of Gloucester, while his interests were diametrically opposed to those of the house of Lancaster, instead of being identical with them. A few weeks later died Cardinal Beaufort, and the stage was thus cleared for younger actors. Somerset and York were both absent from England, and Suffolk was omnipotent at court. He showed a rigorous determination to exclude not merely from power, but even from the king's presence, all but those who were prepared to be the subservient ministers of his will[1]. The same policy was pursued with reference to the local administration[2]. The reaction caused by this arrogance and partiality, and the ill-success of his foreign policy[3], proved his ruin. By 1450 the popular indignation could no longer be restrained, and his impeachment was resolved on by the Commons. The ultimate decision of the question is an instance of a tendency, which appears more than once in this time of weakness and decline of true political life; the tendency, namely, to throw the responsibility for questionable actions upon the crown, and so to shift it from the shoulders of those who constitutionally ought to bear it. At the time of Henry's marriage the Lords protested that the king had been moved to the thought of peace 'onely by oure Lorde,' and not by 'the Lordes, or other of your suggettes[4].' So now the king, 'by his owne advis, and not reportyng hym to th' advis of his Lordes, nor by wey of judgement,'

Ministry of Suffolk.

His impeachment.

Tendency to shirk constitutional responsibility.

[1] Even the sermons preached before the king were subjected to a rigorous censorship; Gascoigne, p. 191; cf. Gregory, pp. xxiii, 203.

[2] Rot. Parl. v. 181 b, and notes to Chap. xvii. below.

[3] Cf. Gascoigne, p. 219: 'Et sic facta est alienacio . . . predictarum terrarum . . . sine aliqua pace finali conclusa . . . inter illa duo regna.' Henry's subsequent protest that the cession of Maine was only made in consideration of a secure peace (Rymer, xi. 204, March 15, 1448) was, in the face of the actual facts, not worth the parchment it was written on. The same may be said of the declaration of Suffolk's loyalty; Rot. Parl. v. 447 b.

[4] Rot. Parl. v. 102 b. The same tendency appears in the Privy Council. See the case of Somerset's application for a grant, cited in the notes to Chap. xix. below. In the challenge which Henry V sent to the Dauphin in 1415, it is stated that none of his counsellors had dared to counsel him in so high a matter; Rymer, ix. 313.

banished Suffolk for five years, the Lords protesting that this 'proceded not by their advis and counsell, but was doon by the kynges owne demeanaunce and rule[1].' In all these cases the Lords ought, if they approved of what was done, to have accepted their share of the responsibility, or, if they disapproved, they should have frankly opposed it. Their actual course was a piece of political cowardice. The whole proceedings in the case of Suffolk were most unconstitutional, a flagrant evasion of the right of the Commons to bring an accused minister to trial before the House of Lords[2]. The idea of Henry was no doubt to find a compromise whereby the Commons might be satisfied, and yet Suffolk might be saved. He failed egregiously in both. Suffolk was murdered at sea, and this gave the signal for all the mischief that followed. The Commons of Kent rose under Cade, complaining, among other things, that 'the fals traytur Pole that was as fals as Fortager (Vortigern) . . . apechyd by all the holl comyns of Ingelond, . . . myght not be suffryd to dye as ye law wolde[3].'

Rising of Cade.

The rising of Cade was but the climax of a process which had long been going on. The government had gradually been losing all hold upon the country, and in the general paralysis of the central administration local disorder had increased to a frightful extent[4]. The causes of these 'troubles and debates[5]' are precisely those evils against which Fortescue's proposed reforms are mainly

Causes of governmental weakness.

[1] Rot. Parl. v. 183.

[2] This right was not in the slightest degree affected by Suffolk's resignation of his privileges as a peer.

[3] Three Fifteenth Century Chronicles, p. 95. According to Basin, i. 251–2, Somerset fanned the popular indignation against Suffolk, in order to divert attention from his own military failures.

[4] The year 1443 e.g. seems to have been specially troublous. There were disputes between the Earl of Northumberland and Kemp the Archbishop of York, P. P. C. v. 309, cf. ib. 268–9, 273; between Lord Grey of Ruthin and the town of Northampton, ib. 305; between S. Mary's Abbey, York, and the Corporation of that city, ib. 225, 232; between Fountains Abbey and Sir John Neville, ib. 241: there were riots at Salisbury, ib. 247–8; and in London, ib. 277–8. In 1437 the whole country was so disturbed that copies of the Statute of Winchester were sent to all the sheriffs, with orders for its enforcement; ib. 83.

[5] See below, Chap. xvii.

directed, and they must therefore be investigated somewhat in detail.

Poverty. One great cause of the weakness of the government was no doubt its poverty. The revenue both central and local[1] was hopelessly encumbered, largely by grants of annuities and pensions to persons who were in reality much richer than the crown[2]. The notes to this work will show in detail how every branch of the public service was constantly in arrear[3]. It was seldom if ever possible to wait until the supplies granted by Parliament were actually collected. Parliament itself generally gave authority to the Council to raise loans on the security of the taxes. Where this parliamentary sanction was given, and the loans were punctually repaid, this system was perhaps constitutionally unobjectionable[4]. But the financial result was disastrous. Fortescue estimates the loss to the king at 'the fourth or fifth penny of his revenues[5].' Loans were constantly asked for from individuals, corporations, and towns, and sometimes in a way which seems distinctly unconstitutional[6]. Beaufort was the chief lender and loan

Loans.

[1] On the state of the local revenue, see notes to Chap. xv. below.

[2] See notes to Chap. vi. below, and cf. Gascoigne, p. 158.

[3] See especially notes to Chaps. vi. and vii.

[4] A list of towns and persons, with the sums which they were expected to lend under Parliamentary authority, is in P. P. C. iv. 316 ff. (1436). There are innumerable entries in the Cal. Rot. Pat. 'de mutuo faciendo per totum regnum;' 273 a, 274 b, 275 b, 276 b, 280 b, 284 b, 289 b, 293 b, 295 a, 296 a. Whether all these had parliamentary authority I cannot say. The Lords of the Council and others had frequently to bind themselves not to allow the assignments made for repayment of loans to be tampered with; P. P. C. iv. 145; Rot. Parl. iv. 275 b. This precaution had been taken under Henry V; ib. 117. That it was not unnecessary is shown by the fact that in 1442 Beaufort alone supported the Treasurer in resisting an attempt to assign revenue that had been already appropriated; P. P. C. v. 216, cf. 220. But in 1443 he agreed to a grant out of the customs of London, 'notwithstandyng any assignement maade before, and notwithstandyng any estatut act or ordenance;' ib. 227.

[5] Chap. v. below.

[6] In 1430 the Pope lent Henry money; P. P. C. iv. 343. In 1437 a special appeal was made to the clergy; ib. v. 42. Dr. Stubbs (C. H. iii. 276 note) has tried to minimize the charge of unconstitutional taxation brought against the Lancastrian kings. One document, he thinks, is wrongly assigned to that period. Other cases 'involve only the sort of loans

contractor to the government[1]. The king's jewels were perpetually in pawn[2]. And the government seem not to have been above such petty acts of tyranny as exacting the fines for respite of knighthood twice over[3]. Fortescue himself admits that the poverty of the king compels him 'to fynde exquysite meanes of geyting of good[4].' It is hardly likely that in this he is thinking only of the reign of Edward IV. It is obvious that an administration thus starved could not be efficient. The remedies which Fortescue proposes for this state of things are a large increase in the permanent endowment of the crown, and the making of that 'livelod' inalienable, a resumption of grants, the limitation of the king's power of giving by making the consent of the council necessary, and a system

Exquisite means.

Fortescue's remedies.

which were sanctioned by Parliament,' though, if they were not actually sanctioned by Parliament, their constitutional character would still be doubtful. But the following instance (which Dr. Stubbs does not cite) seems too clear to be explained away. 'RIGHT trusty, &c. Howe it be that .... we .... charged you either to have sende .... the cc. marc̃, like as ye aggreed .... to lenne us, ... or elles to have appered personally before us and oure Counsaille; .... Nevertheless .... ye neyther have sende the saide money, nor appered .... For so moche we write .... straitely charging you, that as ye wol eschewe to be noted and taken for a letter and breker of tharmee, whiche is appointed to be sende unto our saide duchie (of Guyenne), ... ye withoute delay .... either sende by the berer herof the saide cc. marc̃, ... or comme in alle possible haste personelly before oure saide Counsaille, ... upoñ the paine abovesaide.' (July, 1453,) P. P. C. vi. 143, cf. ib. 330. To require a person to send money by the bearer, or to appear before the Council under pain of being 'noted' as a disloyal subject, is surely as arbitrary a proceeding as can well be imagined. That the man had promised to lend the money does not affect the constitutional question, if the promise was one which the government had no right to exact. Edward IV's financial measures were perhaps only a reduction to system of the hints furnished by his predecessors.

[1] For Beaufort's loans, see P. P. C. iv. and v. passim.

[2] e.g. P. P. C. iv. 214, vi. 106, &c. Cf. notes to Chap. vii.

[3] At least a petition of the Commons that this might not be done was refused in 1439; Rot. Parl. v. 26 b.

[4] Chap. v. below. According to De Coussy, c. 42, ed. Buchon, p. 83 b, the poverty of the royal household was sometimes so extreme, that the king and queen were in positive want of a dinner. On one occasion the Treasurer had to redeem a robe which the king had given to St. Alban's, because it was the only decent one which he possessed; Whethamstede, i. 323. That this poverty was one great cause of the unpopularity of the government of Henry VI, see Eng. Chron., p. 79.

of ready money payments, whereby a saving of twenty or twenty-five per cent. on the ordinary expenditure may be effected[1].

Power and insubordination of the nobles.

Another main cause of the paralysis of the government was the overgrown power and insubordination of the nobles. 'The two cankers of the time were the total corruption of the Church, and the utter lawlessness of the aristocracy[2].' The condition of the English Church and the policy and relations of the Lancastrian kings towards it are subjects which, however interesting, cannot be discussed here. They did not come within the scope of Fortescue's writings, and if they had, his orthodoxy and optimism[3] would probably have made him averse to discussing them. But the reduction of the power and influence of the nobles is one of the chief objects which he has in view, and is the end to which most of his reforms are directed. The danger to the crown from 'over-mighty subjects' is one that is never absent from his mind. This therefore is a question which must be carefully discussed.

Origin of the evil under Edward III.

For the origin of the evil, in the form in which it appears during our period, we must go back to the time of Edward III. The evils of the older feudalism had been sternly repressed by William I and Henry I. Henry II had excluded feudal principles from the framework of the government. Edward I had eliminated them from the working of the constitution. The reign of Edward II is a period of transition during which the lords tried for a moment to recover the ground which they had lost; but the Despencers met them by a combination of the Crown and Commons, and for the first time placed upon the Statute Book a declaration of the principles of parliamentary government. The long reign of Edward III completed the work which the Despencers, from whatever motives, had begun; and the Commons steadily won their way to a legal equality with the elder estate of the

[1] See Chaps. vi–xi, xiv, xix, xx, below, and the notes thereto.

[2] Rogers' Gascoigne, Introduction, p. lviii.

[3] See below, Introduction, Part III.

baronage. The latter could no longer dream of monopolizing the government as they had attempted to do under Henry III. The Commons might be led, might be influenced, they could not be ignored. But though the great lords could not hope for a *de jure* monopoly of power, their influence *de facto* was still enormous. And it increased under Edward III, largely owing to the effects of the French wars. The old feudal system of military service being to a great extent obsolete, and being besides wholly unsuited to the carrying on of a prolonged foreign war, Edward III introduced a new method of raising forces, whereby the Crown contracted, or, as it was called, indented with lords and others for the supply of a certain number of men at a fixed rate of pay. Thus not only did the lords make profits, often very large, out of their contracts with the government, and enrich themselves with prisoners and plunder while the war lasted; but when the war was over, they returned to England at the head of bands of men accustomed to obey their orders, incapacitated by long warfare for the pursuits of settled and peaceful life, and ready to follow their late masters on any turbulent enterprise. These considerations will largely account for the ease with which under Richard II a combination of a few powerful nobles was able to overbear the might of the Crown. The reign of Edward III was moreover the period of that pseudo-chivalry, which, under a garb of external splendour and a factitious code of honour, failed to conceal its ingrained lust and cruelty, and its reckless contempt for the rights and feelings of all who were not admitted within the charmed circle; and it saw the beginning of that bastard feudalism, which, in place of the primitive relation of a lord to his tenants, surrounded the great man with a horde of retainers, who wore his livery and fought his battles, and were, in the most literal sense of the words, in the law courts and elsewhere,

Change in the system of military service.

Its results.

Pseudo-chivalry and bastard feudalism.

'Addicti jurare in verba magistri;'

while he in turn maintained their quarrels and shielded their

crimes from punishment[1]. This evil, as we shall see, reached its greatest height during the Lancastrian period.

Power of the great lords increased by Henry IV's accession.

The independence of the great lords thus fostered by the tendencies of Edward III's reign and by the events which happened under Richard II, was still further increased by the accession of Henry IV. To some of them, the Percies and Arundels especially, Henry largely owed his crown. It is true that having a great stake in the maintenance of the government which they had set up the lords contributed considerable sums to the support of Henry[2]. But this very feeling that they were necessary to him increased their sense of independence; and in 1404 they showed how they construed their obligations to the Crown, refusing to find Northumberland guilty of treason for his share in the rebellion of the Percies in 1403, and treating the matter as a mere case of private war between him and the Earl of Westmoreland. Even if this had been a colourable view to take of the affair, this sort of quasi-sanction given to private war, a curse from which England had been almost free from the days of Henry II[3], was of evil omen. To a private war between these very families of Percy and Neville the annalist William Worcester traces the origin of the civil war[4]. Anyhow one cause of that war was this insubordination of the aristocracy, of which private wars were but one symptom among many. If, as Mr. Bright thinks[5], the Commons looked to Henry as their champion against baronial disorder, they must have been grievously disappointed.

The evil aggravated by the French Wars of Henry V.

The evil was aggravated by the French wars of Henry V. Causes came into operation similar to those which we have traced under Edward III; only here they acted with worse effect owing to the degeneration in character of the French wars themselves. The stern

[1] 'The livery of a great lord was as effective security to a malefactor as was the benefit of clergy to the criminous clerk;' S. C. H. iii. 533.

[2] P. P. C., I. xxvii, xxxiii, 102 ff.

[3] See Allen on the Prerogative, pp. 120 ff.

[4] English in France, ii. [770]: 'Initium fuit maximorum dolorum in Anglia.'

[5] Bright, English History, i. 277.

vindictiveness of Henry V left no room for any of that graceful chivalry which had thrown a glamour, however superficial, over the warfare of Edward III and his greater son. And things became worse, when to other debasing influences was added the fury which is born of failure. The English lords ousted from France returned to England at the head of bands of men brutalized by long warfare, demoralized by the life of camps and garrisons, and ready for any desperate adventure. Even during Henry V's lifetime this evil had begun to show itself[1], and it did not diminish under the weak rule of his successor[2]. And these were the men by whom the battles of the civil wars were fought.

Riches of the lords,

Many of the lords were moreover enormously rich. Their estates were concentrated in fewer hands, and the lands of a man like Warwick represented the accumulations of two or three wealthy families[3]. They engrossed offices as greedily as lands[4], their pensions and annuities exhausted the revenues of the crown[5], they made large fortunes out of the French wars which drained the royal exchequer[6], and they were among the chief wool-growers and sometimes wool-merchants in the kingdom[7]. And this wealth of the great lords appeared all the more striking when contrasted with the poverty of the crown[8]: and the contrast comes out strongly in the demand made by Fortescue, that the king shall have for his extraordinary expenditure more than the revenues of any lord[9], and in the exultation with which he declares, that if only the king's offices are really given by the king, 'the grettest lordes livelod in Englande mey not suffice to rewarde so

contrasted with the poverty of the Crown.

[1] See Political Songs, II. xxvii. 119.

[2] Cf. De Coussy, p. 183.

[3] See notes to Chap. ix. below.

[4] See notes to Chap. xvii. below.

[5] See notes to Chap. vi. below. Cf. Gascoigne, p. 158.

[6] Cf. Rogers' Gascoigne, Introduction, p. xxvi, and the list of Fastolf's claims against the crown for military service; Paston Letters, i. 358 ff.

[7] Cf. Rot. Parl. iii. 497, v. 13 a, 274 b; English in France, ii. 443.

[8] 'So pore a kyng was never seene,
'Nor richere lordes all bydene.'
—Political Songs, ii. 230; cf. Rogers, Work and Wages, p. 20.

[9] Below, Chap. ix.

many men, though he wolde departe hit euery dele amonges is seruauntes[1].' The riches of the lords enabled them to maintain their hosts of retainers, while their estates gave them enormous local influence.

Consolidation of the peerage as an Estate of the Realm.

But besides this increase in the general influence of the lords considered as a class, the Lancastrian period saw a sharper definition of their constitutional position as an Estate of the Realm. The idea of hereditary peerage now becomes definitely fixed, the numbers of the temporal peers become smaller and more regular, and the power which the kings had formerly exercised of summoning persons to the Upper House or omitting them at pleasure is practically eliminated. The sense of corporate existence in the Lords grows stronger, and the distance between Lords and Commons wider. Property and influence are concentrated in fewer hands; one result of which is that the spiritual Lords now for the first time acquire a permanent majority in the Upper House[2]. But in interests, and often also in blood[3], they were so closely connected with the temporal Lords, that their separate action in parliament is rarely distinguishable. The constitutional functions of the Lords in their corporate capacity acquired strength and definiteness from the events of Henry VI's reign, and they made good their claim to be considered the ultimate depositaries of political authority during the abeyance of the royal power, whether from infancy, as at the beginning of the reign, or from incapacity, as towards its close.

Dissensions among the lords.

But when the Lords had in these various ways gained possession of power, they began to quarrel among themselves for the exercise of it. It was much the same, to recur to a former illustration, after the revolution of 1688; only there the rivalries between the great lords took the milder form of party government. Here the rivalries of Gloucester and Beaufort brought England to

[1] Below, Chap. xvii.

[2] See the tables in Gneist, Verwaltungsrecht, i. 382 ff.

[3] S. C. H. iii. 369, and vide infra, p. 26. They were moreover often guilty of the same abuses, maintenance, &c. Cf. Paston Letters, iii. 478.

the verge of civil war. Suffolk's monopoly of power caused, as we have seen, a popular insurrection, while under Somerset and York the flame finally burst out, though here the personal issue was complicated with dynastic and constitutional questions, in regard to the last of which, York's position was far more defensible than that of Somerset[1]. But the struggle was not confined to the central government; it was fought out in every shire and district, rising not unfrequently to the height of private war[2]. That private war was separated by no very wide interval from rebellion we have already seen in the case of the Percies. But even where matters did not reach this height, the evils caused by this struggle for influence were very serious. One great object of the lords was to acquire the control of the local administration, to get into their own hands the nomination of all local officers. Fortescue complains bitterly of the way in which the great lords 'engrossed and broked' the royal offices in their neighbourhoods, in order to distribute them to their servants and dependants[3]. But whereas Fortescue thinks only of the loss to the crown and gain to the nobles in patronage and influence, the nobles themselves had a further object in

Private war.

Control of local administration.

[1] The intensity of the party struggle is illustrated by the fact that the Queen and Somerset wrote to the Duke of Norfolk to dismiss certain of his dependants because they were favourable to the Duke of York; Paston Letters, i. 305. In 1454, at the time of the King's first illness when Somerset was struggling to maintain his power against York, we read: 'The Duke hathe espies goyng in every Lordes hous of this land;' ib. 267. In 1459, during the Parliament of Coventry, Henry wrote to the University of Oxford to dismiss certain Bedels who had spoken disrespectfully of the Queen and Prince. The command was obeyed; Munim. Academ. p. 756.

[2] For a list of the private wars which went on during the reign of Henry VI, see S. C. H. iii. 271-2, and the references there given. The struggle between Egremont and Neville is the one to which William Worcester (u. s.) attributes the origin of the civil war. In 1428 it had almost come to a pitched battle between the Duke of Norfolk and the Earl of Huntingdon; Amundesham, i. 25; cf. P. P. C. iii. 36-7, 112. Occasionally the monotony of the proceedings on land was varied by acts of piracy at sea; Paston Letters, i. 268. On the necessity of repressing aristocratic dissensions, cf. Ægid. Rom. De Regim. III. ii. 15.

[3] Below, Chap. xvii, and the notes thereto. Gascoigne complains of an analogous evil in the case of ecclesiastical offices; pp. 132-3.

Perversion of justice.

Local officers.

Juries.

Purchase of doubtful claims.

view, namely, to pervert to their own ends the administration of justice, which was so closely connected with the system of local government. Justices of the Peace might be appointed, who would maintain the quarrels of the party to which they owed their appointments[1]; sheriffs might be nominated, who could be trusted to impanel a jury favourable to their patron's views, sometimes consisting of his servants or liveried retainers[2]. Should the sheriff prove less pliable than usual, the lord or his friends at court for him might obtain royal letters directing the sheriff to impanel such a jury[3]. Failing this, the jury might be intimidated[4] or bribed, or at the last resort the proceedings might be broken up by force[5], unless indeed the less heroic plan was resorted to of simply ignoring an unfavourable decision. In addition to whatever claims they might have of their own to assert, the lords bought up the doubtful claims of lesser men, or agreed to maintain them for a consideration[6], or they obtained grants of lands which were not really in the hands of the crown[7]. And these claims, whether their own or others', were asserted with the

[1] In 1399 the Commons complained that 'maintainers' were made Justices of the Peace by 'brocage;' Rot. Parl. iii. 444 a. Cf. Political Songs, ii. 235–6:

'Now mayntenerys be made justys, . . .
'Now brocage ys made offycerys.'

[2] 'le Viscount . . . retourna un Panell des certeins persons, dount ascuns furent famuliers, et ascuns tenauntz, et ascuns del fee, et del vesture de Adversaries le dit Suppliant;' Rot. Parl. iv. 288 a.

[3] Paston Letters, I. lxix. 208, 214–5. It was said that such letters could be obtained for a noble (*6s. 8d.*).

[4] In one case the intimidation practised on the jury was so notorious and 'horrible,' that even the sufferers 'for pyte and remorce . . . wer lothe' to proceed against them for perjury; Paston Letters, i. 205; cf. ib. 241.

[5] P. P. C. v. 35–9; Paston Letters, i. 212. In 1435 the Duke of Norfolk and the Earl of Suffolk had to promise in the Council that they would not hinder the investigation and punishment of a case of homicide; P. P. C. iv. 300–1.

[6] These gifts and feoffments to great personages of lands of doubtful title, and the forcible entries which followed them, were forbidden by St. 8 Hen. VI. c. 9; cf. Rot. Parl. iv. 352 b; ib. iii. 497 a, b; St. 4 Hen. IV. c. 8; Paston Letters, ii. 80, cf. ib. 187, 'the Duck of Suffolk hath boght . . . . the ry3t that on Bryghtylhed hath in Haylesdon,' &c. . . Cf. Whethamstede, i. 96, where the holder of lands which were claimed by St. Alban's threatens to enfeoff certain lords with them; ib. 203. This was also one of the subjects of Cade's complaints; Stowe, p. 389 a.

[7] Paston Letters, ii. 331.

high hand. Forcible entry and disseisin with violence were everyday occurrences, and were almost restored to the position of legal processes which they had held before the invention of the grand assize[1]. Houses were regularly garrisoned as for a siege, and small armies were brought into the field to attack them[2]. If the aggrieved person appealed to the law, he might find that no counsel would venture to act for him[3], and that no one in the county would dare to say a good word for a man who was known to be out of favour in high quarters[4]. In the numerous petitions which besought the intervention of the council or of parliament, the allegation that there was 'too great might' on the other side for the suppliant to be able to sue at the common law was often true enough. It is idle to worship the form and neglect the substance. Against offenders of this stamp the jury system was powerless to secure justice. Its partial and temporary supersession by the jurisdiction of the council, especially as organized in the later Court of

Forcible entries.

Impotence of the jury system.

[1] Before the invention of the grand assize forcible disseisin was often the only process by which a tenant could be forced by a claimant to show his title to the lands he held. John Paston writes to his wife in 1465: 'As for that it is desyrid I should show my tytill and evydens to the Dewk, me thynkyth he had evyll cowncell to entre in opon me, trusting I shuld shew hym evydens. . . . It is not profitab[l]e . . . that any jentilman shuld be compellid be an entre of a lord to shew his . . . tytill to his lond, ner I will not begine that exsample ne thralldam of gentilmen;' Paston Letters, ii. 209 f. For instances of forcible entry, cf. Rot. Parl. iii. 488, 512 b, 514 a, etc., and Paston Letters, i. 12 ff., ii. 248 ff., 253.

[2] The force with which Lord Molynes attacked John Paston's manor of Gresham was 'to the nombre of a thowsand persones . . . arrayd in maner of werre;' ib. i. 106; cf. ii. xxvi. ff., xlv. f. The Duke of Norfolk brought 3,000 men to the siege of Caister Castle, which he claimed against Sir John Paston; ib. l. ff.

[3] Justice Paston advises a friend not to go into court against a dependant of the Duke of Norfolk: '3yf thu do, thu xalte hafe the werse, be thi case never so trewe, . . . and also, thu canste [get?] no man of lawe . . . to be with the a3ens hym;' ib. i. 42; cf. p. 18. Cf. ib. 60, where there is a petition to the Chancellor that he would 'assigne and streytly comaund' certain persons to act as counsel for the petitioner. That the intimidation practised on lawyers was no idle threatening is shown by the fact, that in 1455 a party of men headed by the son of the Earl of Devonshire attacked and murdered an old man named Radford, 'whiche was of counseil with my Lord Bonvyle,' the Earl's great enemy; ib. 350–2.

[4] 'Here dare no man seyn a gode wurd for 3u in this cuntre, Godde amend it.' Margaret Paston to her husband; ib. 113.

Star Chamber, 'to bridle such stout noblemen or gentlemen,' as Sir Thomas Smith quaintly expresses it[1], was a national blessing.

Corruption of the judges.

Even the judges were not always above suspicion. They accepted solicitations and presents, and gave extra-judicial advice on matters which might very possibly come before them in their judicial capacity, in a way which was in direct contravention of the terms of their oath. Even if this did not affect their conduct on the bench, it was bad enough in itself; but they seem sometimes to have acted with the grossest partiality[2]. Occasionally royal letters were sent to justices as to sheriffs ordering them to show favour to a particular person[3]. Often too the issue of a cause would depend in various ways on the question which party had at the moment the upper hand at Court. In the light of these abuses we can better understand the vigorous words of Cade's proclamation:—'the law servyth of nowght ellys in thes days but for to do wrong, for nothing is sped almost but . . . . for mede, drede, and favor, and so no remedy is had . . . . in eny wyse[4].'

Arbitration.

Amid this general breakdown of law, arbitration was sometimes resorted to, but more often the best hope of an aggrieved person lay either in buying off the opposition

[1] De Republicâ Anglorum, bk. iii. c. 4.

[2] Cf. Paston Letters, i. 419 f.; ii. 201, 252–3. 'God reforme such parcialte,' writes Sir Thomas Howys to Fastolf after detailing the behaviour of Chief Justice Prisot; ib. i. 211–2; Amundesham, ii. 127, 143, 256. When Fortescue says of the judges (De Laudibus, c. 51), 'Nec unquam compertum est eorum aliquem donis aut muneribus fuisse corruptum,' he must have known that he was writing what was untrue. Ægidius Romanus (III. ii. 20) says, on the other hand, 'Judex de facili obliquatur.' Cf. Rot. Parl. iii. 626 b; Gascoigne, pp. 43, 188; and notes to chaps. vi. xv. below. In one case we find a justice, Robert Tirwhit, guilty of the grossest turbulence and breach of the peace; Rot. Parl. iv. 649 f.; and cf. the case of Fortescue's own brother; Family History, pp. 46–7.

[3] Paston Letters, iii. 428. The judges were sworn to do justice to all, 'etiamsi rex per literas suas, aut ore tenus, contrarium jusserit;' De Laudibus, c. 51; cf. Rot. Parl. iii. 471 a, where this abuse is complained of, and reference is made to St. 20 Edw. III. c. 1.

[4] Three Fifteenth Century Chronicles, p. 96.

'Good-lordship' purchased.

of the great man who supported his adversary, or in getting some equally powerful nobleman to maintain his own cause[1]. And for these services the greatest personages were not above receiving the most vulgar considerations. The transaction might be veiled under the name of a horse for my lord[2], or a kerchief for my lady[3], or a book for a prince of a literary turn like Gloucester[4]. But in reality, if not in name, money was given for money's worth; for, as Sir John Paston cynically remarked, 'men do not lure hawks with empty hands[5].' Nothing added more to a man's importance than the diffusion of a belief that he 'stood well in conceit,' as the phrase went, with men of influence in his neighbourhood or at court[6]; no greater disservice could be done to a man, than to prejudice a great man's mind against him, or, to use another contemporary phrase, to 'make him his heavy lord[7].' 'Spende sum what of 3our good now,' writes an anonymous friend to John Paston, 'and get 3ow lordshep, ... *quia ibi pendet tota lex et prophetæ*[8].' William Paston gives his brother similar advice, adding:—'omnia pro pecuniâ facta sunt[9].' That great lords should

[1] 'Sondery folks have seyd to me that they thynk veryly, but if ye haue my Lord of Suffolks godelorchyp (good-lordship), qhyll the werd (world) is as itt is, ye kan never leven in pese;' Paston Letters, ii. 132. 'The frere that cleymyth Oxned . . . seyd pleynly . . . that he xal have Oxnede, and that . . . my lord of Suffolke . . wol be his good lord in that mater;' ib. i. 81; cf. i. 96-8, 233, 323; ii. 206, 344-5, 392, &c. This interference with the course of law by 'pursuit to a great lord' is complained of in the petition cited above; Rot. Parl. iii. 471 a.

[2] Cf. Paston Letters, ii. 97.

[3] 'I praye yow fynd the menys that my Lord have some reasonable meane profyrd, so that he and my Lady may undyrstand that ye desyr to have hys good lordshep;' ib. ii. 348-9. 'My Lady must have somwhat to bye hyr kovercheff besyd my Lord;' ib. iii. 55; cf. ib. 64-5, 295.

[4] Amundesham, II. lxv. 295.

[5] Paston Letters, iii. 65.

[6] 'To th'entente that the cuntre shall thinke . . . that he hathe grete favour amonge the Lordes of the Counsell, and cause men to fere hym the more;' ib. i. 229; cf. ii. 97.

[7] 'The seyd Walter by hese sotill and ungoodly enformacion caused the seyd Duke to be hevy lord to the seyd William;' ib. i. 16.

[8] Ib. i. 156; cf. ii. 72; and Gascoigne, p. 109.

[9] Ib. i. 516-7. The party opposed to the Pastons in Norfolk offered Sir William Oldhall £2,000 (about £30,000 in our money) for his good lordship; ib. i. 151.

Influence on parliamentary elections.

use their local power to influence the parliamentary elections in favour of their own party was natural enough[1]. But this again, apart from any political result, reacted on the local administration. The collectors of the tenths and fifteenths granted in parliament were nominated by the knights of the shire, and it is clear that the impartiality of these appointments and of the persons thus appointed was not above suspicion[2].

And this example of lawlessness and insubordination spread downwards through all ranks of society. The provisions of the Livery Statutes against companies maintained at their own charges would seem to show that this curse of continental life was not unknown in England[3]. Bands of armed men, often commanded by some person of good birth, and favoured secretly perhaps by still greater men, terrorized whole districts, levying black-mail, and committing every kind of outrage with impunity[4]. No age or sex or place was respected. Old

Companies.

Outrages.

But this was in Oct. 1450, just before the meeting of the Yorkist Parliament of which Oldhall was Speaker, and the favour of so influential a Yorkist was well worth paying for. Norfolk seems however to have been *Warwickist* rather than strictly Yorkist; ib. i. 532, 536; iii. 478. The Pastons were in high favour during Henry VI's restoration; ii. 412. The Commons of Norfolk resisted an attempt of Edward IV to land there in 1471; Warkworth, p. 13.

[1] Paston Letters, i. 160–1. In 1455 the Duchess of Norfolk writes that it is 'necessarie . . . that my Lord have . . . in the Parlement suche persones as longe unto him, and be of his menyall servaunts;' ib. 337; cf. 339 ff.; iii. 53, 55, 431. Yet the Duke of Norfolk complained in 1454 that the election in Suffolk had not been fairly conducted; P. P. C. vi. 183. In 1455 the Sheriff of Kent was ordered to see that the elections were free, because of the 'besy labour made . . . by certaine persones;' ib. 246. Five years before Cade had complained that the elections in Kent were not free; Stowe, p. 389 b.

[2] Paston Letters, I. li.; Gascoigne, p. xxxiii. In one instance we find the Knights of the Shire nominating certain persons as collectors of the tenth and fifteenth, and then falling upon them and attempting to rob them; Rot. Parl. iv. 30–1. Cade complained that these nominations were regularly bought and sold; Stowe, p. 389 b.

[3] Rot. Parl. iii. 600 b, 662 b; St. 7 and 8 Hen. IV. c. 14; 13 Hen. IV. c. 3.

[4] Rot. Parl. iii. 445 b. For accounts of the doings of particular bands of ruffians, see ib. 630–2; iv. 32, 254 a. In Derbyshire certain lawless persons took to the woods, 'like as it hadde be Robynhode and his meyne;' ib. v. 16 b; Paston Letters, I. lxxxiii. ff., 231 ff., 276 ff.

men and old women of fourscore years were fallen upon and brutally ill-treated or killed[1]; heiresses of tender age were forcibly abducted[2]; widows who had any property were from their unprotected condition specially exposed to molestation[3]. The priest was attacked in the chancel, the monk in his cloister[4], and murders were attempted, Italian fashion, during 'the using of the mass[5].' Conversely, we find priests and monks engaged in some of the worst of these transactions[6]. Outrage provoked retaliation, and cruel reprisals were taken, often not on those who had done the original harm, but on their innocent tenants and dependants[7]. And these things were done many times in broad daylight and in public places, without any attempt at concealment; the perpetrators calculating, generally correctly, that either by violence or chicanery they would be able to evade the consequences of their misdeeds. So in the same way that system of corrupt influence or 'brokage' which I have described descended from rank to rank of society. The object of every man was to curry favour with those above him, to win influence over those below; so that by a sort of ignoble caricature of the feudal system the whole structure of society from the apex to the base was knit together in a hierarchy of corruption.

Hierarchy of corrupt influence.

Nor was the influence of the great confined to the spheres of politics and law. They interfered in the private affairs of families[8], in the inner economy of monasteries[9], in the

Ecclesiastical influence of the great lords.

[1] e.g. Rot. Parl. iii. 564 a; Paston Letters, i. 239.

[2] e.g. Rot. Parl. iii. 564 b: a child of nine years carried off. And this was done by the Sheriff, 'under colour of his office,' in order to marry her to his son. In 1454 complaint was made that the forcible abduction of women who had any property was becoming common; Rot. Parl. v. 270 b. On this petition was founded St. 31 and 32 Hen. VI. c. 9; cf. Paston Letters, i. 551–3.

[3] e.g. Rot. Parl. iii. 520 b, 565–6; iv. 92 b.

[4] Paston Letters, i. 238–9, 279.

[5] Ib. 237; cf. ii. 81, 251. On the frequency of robberies from Churches, cf. Rot. Parl. v. 632 b; Gregory, pp. 234–5.

[6] Rot. Parl. iii. 518 a, 564 a.

[7] Gascoigne, pp. 133–4.

[8] Paston Letters, i. 129 f., 258, 294–6.

[9] Whethamstede, i. 112. On the relations between the aristocracy and the monasteries, cf. also Pecock, Repressor, pp. 549 ff.

granting of academical degrees[1]; they influenced church appointments from the lowest to the highest[2]; ecclesiastical patrons were glad enough to gratify them with grants of next presentations for their clerical dependants[3], who often were their men of business[4], and men were made bishops, not for any knowledge or virtue which they possessed, but 'because of the great blood they were of[5].' The general condition of the English Church lies, as I have said, outside my subject. But it may here at least be recorded how heavily the days of aristocratic ascendancy told against its purity and independence, and how seriously the one great evil of the time, the lawlessness of the nobility, intensified the other, the corruption of the Church.

Semi-legal violence.

But besides all the illegal violence which undoubtedly existed, there was an immense deal of legal or semi-legal force called into play. Forcible ejectments were followed by equally forcible recoveries. Violent distraints gave rise to no less violent replevins, and the line which separates legality from illegality was very easily passed[6]. Often too men were brutally attacked, merely because they had ventured to assert their rights by law[7]. Ambushes were laid for John Paston during the time that he had his various lawsuits on hand[8], even in London he was not secure from attack[9]; while if his wife's fears were not exaggerated, it

[1] Munimenta Academica, pp. 206–8, 332.

[2] On this see Gascoigne, pp. 14, 19, 22, 25, 32, 55, 72, 132, 166, 180–1, 222.

[3] Amundesham, ii. 370–1; Whethamstede, II. xxv. ff., and the references there given.

[4] e.g. Thomas Howys for Fastolf, James Gloys for the Pastons, both priests; v. Paston Letters passim, and cf. ib. i. 299.

[5] This phrase occurs with reference to the promotion to the see of Canterbury of Thomas Bourchier; P. P. C. vi. 168; cf. Rymer, x. 640; P. P. C. vi. 266 (with reference to George Neville, the brother of the King-maker); Rot. Parl. iii. 456, 460 a; Gascoigne, pp. 16, 22–3. On the increase in the number of noble prelates, see S. C. H. ii. 402, 449; iii. 368–9.

[6] Cf. e.g. Paston Letters, II. xxv. ff., 183 ff.

[7] Ib. i. 73–4.

[8] One plot was to waylay him and carry him off to some lord in the North; ib. i. 544; cf. ii. 26, 33, 39, 53.

[9] 'Thow ȝe ben at London ȝe xul ben met with ther as wele as thow ȝe were her; and ther for I pray ȝu hertyly . . . have a gode felaschep with ȝu qhan ȝe xul walk owt;' ib. i. 112.

would seem that his enemies were capable even of attempting to poison him[1].

These various abuses were the subject of frequent complaints and enactments in Parliament[2]. In the very first Parliament of Henry IV a statute was passed against livery and maintenance[3]. In 1401 another statute was made on the same subject[4]. In 1406 the Commons complained that bannerets, knights, and esquires gave liveries of cloth to as many as three hundred men or more to uphold their unjust quarrels, for maintenance, and in order to be able to oppress others at their pleasure. And no remedy could be had against them because of their confederacy and maintenance[5]. On this complaint a fresh statute was founded, and another was passed in 1411[6]. In 1414 a statute was passed against embracery, champerty, and maintenance[7]. In 1427 the Commons complained of the non-observance of the livery statutes[8]. In 1429 fresh provisions were made on the subject because the existing ones could not be carried out owing to maintenance[9]. In 1433 the plan was tried of exacting from the members of both

Statutes against livery and maintenance.

[1] 'For Goddys sake be war what medesyns ye take of any fysissyans of London;' ib. ii. 160; cf. iii. 474.

[2] On the earlier legislation on the subject of livery and maintenance, see S. C. H. ii. 485, 608; iii. 530–6.

[3] St. 1 Hen. IV. c. 7; Rot. Parl. iii. 428 b.

[4] St. 2 Hen. IV. c. 21; Rot. Parl. iii. 477 b.

[5] Rot. Parl. iii. 600; St. 7 and 8 Hen. IV. c. 14. If the retinues of simple knights and esquires were so numerous, we can imagine what those of the greater lords would be. An adherent of the young Duke of Suffolk boasted that his lord was able to keep daily in his house more men than his adversary had hairs on his head; Paston Letters, ii. 184. According to Justice (afterwards Chief Justice) Billing, men often ruined themselves by keeping up a greater retinue than their means would allow: 'That is the gyse of yowr contre men, to spend alle the goode they have on men and lewery gownys . . . and at the laste they arn but beggars;' ib. i. 297.

[6] St. 13 Hen. IV. c. 3; Rot. Parl. iii. 662 a.

[7] St. 2 Hen. V. c. 3; Rot. Parl. iv. 52 a.

[8] Rot. Parl. iv. 329 b.

[9] St. 8 Hen. VI. c. 4; Rot. Parl. iv. 348 a. At the same time a statute was passed against the prevalent murders, homicides, riots, &c.; ib. 356 a; St. 8 Hen. VI. c. 14. But it was one thing to pass statutes, another to get them observed. Cf. Political Songs, ii. 252:

'Many lawys, and lytylle ryght;
'Many actes of parlament,
'And few kept wyth tru entent.'

houses of Parliament an oath against maintenance and other kindred evils, which oath was subsequently extended to the whole country[1]. But this measure proved no more effective than the others: and in 1459 the Commons complained that the most notorious evil-doers were maintained by men of great might[2]. The same story is continued under Edward IV. Articles against livery, maintenance, etc. were issued by the king in his first Parliament[3]. In 1468 the previous legislation on the subject of liveries was confirmed[4]. Yet none the less the Commons in 1472 complained that murders, robberies, forcible entries, maintenance, etc. were still rampant[5].

Legislation on the subject of sheriffs and juries.

The legislation and petitions on the subject of oppressive and partial sheriffs and corrupt juries are equally voluminous[6]. For the latter evil a remedy was often sought in raising the qualification of the jurors, either for a particular case, or for a particular class of offences[7]. How little effectual such measures were likely to be is proved by the fact alleged by an anonymous correspondent of Sir John

[1] Rot. Parl. iv. 421 b, 455 b. In 1426 and 1430 a similar pledge had been exacted from the lords of the council; P. P. C. iii. 217; iv. 64. The Lords were not to receive or maintain evil-doers, nor by occasion of gift or feoffment support other men's quarrels by word, deed, or by message, or writing to judge, jury or party; or by taking the party into their service, or giving him their livery, nor were they to conceive indignation against any judge or officer for executing his office according to law. Cf. ib. vi. 319 f.; Rot. Parl. iv. 262.

[2] Rot. Parl. v. 367 b.

[3] Ib. 487 b.

[4] Ib. 663 a; St. 8 Edw. IV. c. 2.

[5] Rot. Parl. vi. 8 a. For concrete instances, cf. ib. 35 a, 38 a.

[6] Cf. Rot. Parl. iii. 513 b; iv. 11 a, 306, 328 a, 380 b, 403 a, 408 b, 448 b; v. 29 a, 110 a, 493 b; St. 4 Hen. VI. c. 1; 6 Hen. VI. c. 2; 9 Hen. VI. c. 7; 11 Hen. VI. c. 4; 18 Hen. VI. c. 14; 23 Hen. VI. c. 9; 1 Edw. IV. c. 2; 1 Ric. III. c. 4. In 1426 the Council ordered that no lord's steward should be appointed sheriff, nor any 'man of lawe, for ever it is to suppose þat þai have oone parties matiere or oþer in hande;' P. P. C. iii. 219–221. Cf. as to other local officers not being lawyers, Rot. Parl. iii. 504 b; St. 4 Hen. IV. c. 19. On the oppressions of sheriffs, see also notes to Chap. xv. below. As long as the jurors were really witnesses, it was fair enough to leave to the local authorities the power of choosing those persons who were most likely to be acquainted with the facts; but when the jury changed its character, this power became the source of those evils which I have been describing; cf. Palgrave, Essay on the King's Council, § xxii.

[7] e. g. Rot. Parl. iii. 488 f., 597 b; iv. 501 b; St. 15 Hen. VI. c. 5.

Paston's, that there were men worth £100 per annum who had been induced to swear falsely against him[1]. And these evils were sometimes so serious and notorious as to call for special notice in those curious discourses with which it was then customary to open Parliament[2].

Picture given in the Paston Correspondence.

But even more clearly than in the Rolls of Parliament do we see the state of the country and the ideas of the people mirrored in the Paston Correspondence, from which so many illustrations have been already taken[3]. Nothing is more curious than the way in which it is assumed that it is idle to indict a criminal who is maintained by a powerful person[4]; that it is useless to institute legal proceedings unless the sheriff and jury can be secured beforehand[5]; nothing can be more naive than the complaints as to the difficulty of being sure of jurymen[6], because either they are 'ambidexter,' i. e. take bribes from both sides[7], or they fear 'a turning world,' i. e. some sudden change in the relations of parties[8]. Very quaint too is the astonishment expressed by John Paston *not* at being attacked in an unprovoked manner at the door of Norwich Cathedral, so much as at being attacked by a dependant of the Duke of Norfolk who was his 'good lord[9];' for it is evidently

[1] Paston Letters, ii. 325. When Fortescue (De Laudibus, c. 29) talks of the impossibility of corrupting an English jury, he is saying what, with his judicial experience, he must have known to be untrue. See a curious case in P. P. C. iii. 313, where the judges advised the Council not to send a culprit before a jury, as it was probable that he would find means to corrupt them.

[2] For example in 1431, 1432, 1433, and 1442; Rot. Parl. iv. 367 a, 388 a, 419 a; v. 35 b.

[3] Many of the most striking incidents are summarized in Mr. Gairdner's valuable introductions. But no summary however able can give the effect which is produced on the mind by a perusal of the Correspondence itself.

[4] 'Ther kan no man indyte hym for Sir T. Todenham maynteynyth hym;' i. 190.

[5] 'But of these and of many mo wers it is a gret foly to laboren in as for any indytements, but if ye be ryght seker of the sherefes office; for if he lyst, he may returne men,' &c.; i. 191; cf. ii. 217.

[6] 'Ye truste the jury of Suffolk; remembre what promyse Daubeny hade of the jury and what it avaylid;' ii. 182.

[7] i. 192.

[8] i. 198.

[9] 'Whech was to me strawnge cas, thinking in my conseyth that I was my Lords man and his homagier,or Charlis [the assailant] knew hys Lordschipe, that my Lord was my god Lord,' &c.; i. 232.

regarded as a great scandal to a lord, that two of his dependants should be at feud[1]. Bribes are offered and looked for as a matter of course[2], it is assumed that an officer will use his official position in favour of his friends[3], and the only hope of redressing evils is considered to lie in the influence of the great. The issue of a lawsuit is bound up with the fate of parties[4]; and the aim of all is to be upon the stronger side[5]. We see here the almost royal style in which the great lords addressed and were addressed by their inferiors[6]; and we know from other sources that they occasionally imitated some of the worst abuses of the royal power, purveyance[7], and the forest laws[8].

Remedies proposed by Fortescue.

The measures which Fortescue would take for reducing the overgrown power of the great lords are,—first, to wrest from their hands the revenues of the crown by an act of resumption, and the patronage of the crown by restoring in all cases direct appointment to offices by the king; he

[1] 'Dysworschep to my Lord that tweyn of hys men schold debat so ner hym;' ii. 245.

[2] 'I proferid hym [i.e. the sheriff] if he wold make yow promys . . . ye wold geff hym in hande as he wold desire, . . . but he lokyth aftyr a gret brybe,' &c.; i. 215–6, cf. 207, 247, 311–2. 'I had founde the meane for to have ben quytte, for I whas through with the scheryff and panel made aftyr myn avice;' ii. 60. Amos (De Laudibus, pp. 81 ff.) says that a charge 'pro amicitiâ vicecomitis' was a regular item in attorneys' bills at this time. For efforts made to secure the appointment of a favourable sheriff, cf. Paston Letters, i. 158, 165–6, 171, 521; ii. 59, &c.

[3] 'The Meyr . . . wull do anythyng that he may for hym and his;' ii. 249.

[4] Ib. i. 335.

[5] Ib. 66.

[6] The Duke of Norfolk e. g. is always addressed and spoken of as 'right high, and myghty prynce,' or 'his hyghnes;' i. 15, 143, 233, &c. He addresses his inferiors, 'right trusti and well-belovid . . . we consayled be the Lordes . . . and oder of our Consayle,' &c.; i. 337; ii. 247, &c.

[7] In 1445 the Commons complained of the 'Purveiours or Achatours of the Duk of Gloucestr', and of other Lordes and Estates of the Roialme,' contrary to the Stat. 36 Edw. III. c. 2; Rot. Parl. v. 115 a. On this complaint a new statute was founded; 23 Hen. VI. c. 14.

[8] The way in which the Earls of Arundel had extended their rights of chace and warren had in 1415 thrown a great part of the Rape of Lewes out of cultivation. And trespassers on these alleged rights had been cruelly imprisoned and even tortured. The Earl of Arundel, against whom these charges were brought, was at that time Treasurer of England; Rot. Parl. iv. 78, cf. ib. 92 a.

would prevent the accumulation of estates by using the veto which the feudal system gave the king on the marriage of heiresses; and the accumulation of offices by enacting that no one should hold more than one office at the same time, or two at the very most. And last and most important of all, he would eliminate the influence of the nobles from the government, by excluding them almost entirely from the Privy Council, and transforming that Council on a purely official basis[1].

Litigiousness of the age.

The fact that so much of the prevalent injustice was committed under, or indeed by means of, the forms of law is connected with another characteristic of the age, namely, its extreme litigiousness. Legal chicane was one of the most regular weapons of offence and defence, and to trump up charges however frivolous against an adversary one of the most effectual means of parrying inconvenient charges against oneself[2]. The prevalence of false indictments and malicious suits is a frequent subject of complaint in Parliament[3]. Forgery of documents seems to have been common; and when statutes were passed against this practice, advantage was taken of these statutes to throw suspicion on genuine title-deeds[4]. False allegations of villenage were made in order to bar actions at law brought by those against whom the allegation was made[5]. Disseisins were followed by fraudulent feoffments, in order that the person disseised might not know against whom his

[1] See below, Chaps. x, xi, xiv, xv, xvii, and the notes thereto. On the condition of the English aristocracy, cf. also Pecock, Repressor, p. 429; Whethamstede, i. 222; Gascoigne, pp. 62, 218. The aristocratic theory of society is stated quite nakedly in the reply of 'Daw Topias' to the Lollard controversialist, 'Jack Upland.' Just as in the body the hands must serve the head,

'Right so the comoun peple God hath disposid,
'To laboren for holi chirche and lordshipis also.'

Political Songs, ii. 45.

[2] Cf. Paston Letters, i. 107, 119, 240, 242, 244.

[3] Rot. Parl. iii. 505 a, 511 a; iv. 120 a, 147 a, 305 b, 327 a (= St. 6 Hen. VI. c. 1); v. 109 b, 325 b; St. 33 Hen. VI. c. 6; cf. P. P. C. v. 215.

[4] Rot. Parl. iii. 543 b; iv. 10 a, 119, 121 b, 378 a; St. 5 Hen. IV. c. 14; 1 Hen. V. c. 3; 7 Hen. V. c. 2. Cf. Paston Letters, i. 553; iii. 474, where we hear of title-deeds 'the seals of which were not yet cold.'

[5] Rot. Parl. iii. 499 a; iv. 58 b. For a case of horrible ill-treatment of an alleged villein by Humphrey Duke of Gloucester, see ib. v. 448.

Number of lawyers.

action lay[1]. One cause of these evils was thought to be the excessive number of attorneys, who stirred up litigation in order to make business for themselves. More than one statute was passed to reduce their number[2]. The fifteenth century must have been indeed a golden age for lawyers. This litigiousness of the time comes out strongly, as might be expected, in the Paston Correspondence, especially in the letters of Sir John Fastolf, who, like his younger contemporary Commynes[3], not only lived in a world of litigation himself, but left a handsome legacy of legal troubles to his successors. 'Every sentence in them refers to lawsuits and title-deeds, extortions and injuries received from others, forged processes affecting property, writs of one kind or another to be issued against his adversaries, libels uttered against himself, and matters of the like description[4].' And Mr. Gairdner remarks very justly on the evidence which the Correspondence affords of the wide diffusion of legal knowledge among all classes, not only the men but even the women showing themselves perfectly familiar with the processes and terminology of the law[5]. And indeed in such an age some knowledge of the law was most necessary, and any one who had more than an average acquaintance with it might render very important services to himself and his neighbours[6].

Diffusion of legal knowledge.

[1] Rot. Parl. iii. 497 a; cf. iv. 39 a; vi. 110 a. This abuse was forbidden by St. 1 Ric. III. c. 1, 'Against privy and unknown feoffments.'

[2] Rot. Parl. iii. 504 a, 642 b (cf. 666 a); v. 326; St. 4 Hen. IV. c. 18; 33 Hen. VI. c. 7; cf. Paston Letters, iii. 478. On this multiplication of lawyers, and lawsuits, cf. Gascoigne, pp. 109, 202. Basin makes the same complaint of Normandy; ii. 32–3.

[3] On Commynes' lawsuits, see the Introduction to Mdlle. Dupont's edition; De Lettenhove, Lettres et Négociations; Fierville, Documents Inédits.

[4] Paston Letters, I. lxxxvii.

[5] Ib. lxxxvii. f. Cf. S. C. H. iii. 596: 'Every man was to some extent a soldier, and every man was to some extent a lawyer.'

[6] 'Thynkk onis of the daie of youre fadris counseyle to lerne the lawe, for he seyde manie tymis that ho so ever schuld dwelle at Paston, schulde have nede to conne defende hym selfe;' Agnes Paston, widow of Justice Paston, to her son Edmund, i. 58. In one of the Appendices to Amundesham there is mention of a clergyman who had begun life as an apprentice at law. 'Hujus scientia et doctrina plurimos in necessitatibus et juris periculis eruebat a ruina;' i. 444. The legal acumen manifested by Clarence and Gloucester in their dispute about the

To return to the constitutional summary of the period which we quitted at the death of Suffolk. The disappearance of Suffolk worked no improvement in the situation. 'To pull down one bad man like Suffolk was merely to make room for another bad man like Somerset[1].' I have said[2] that in regard to the constitutional questions that were involved in the struggle between York and Somerset the constitutional position of the former was more defensible than that of the latter. And this I must maintain in spite of the opinion of Dr. Stubbs to the contrary[3]. It is quite true that the right of appointing ministers belonged technically to the crown. But Henry IV had promised to rule with the 'common advice, counsel, and consent' of the nation; and therefore on a broader view the maintenance of Suffolk and Somerset in spite of universal distrust and detestation, and the exclusion of York in spite of the general desire for his admission to power, was a breach of the original compact by which the house of Lancaster ruled, and reduced Suffolk and Somerset to the level of mere royal favourites. It is true again that the kingdom did not 'need a deliverer like Henry IV[4],' but a minister like York, who was both a capable general and a firm administrator[5], was precisely what it did need. That York's pedigree and popularity made him an object of suspicion to the court was no justification for his exclusion from power, for York's claims would probably have remained dormant if he had not been forced almost in self-defence to assert them[6]. It is true that, owing to the unconstitutional conduct of his enemies, York was forced into courses for which the constitution furnished no justification. But seeing that the court did not pay the slightest heed to the remonstrances of the nation constitutionally expressed in Parliament, he may well have thought that only by force could the country be rescued from the in-

Constitutional history after the death of Suffolk.

Position of York and Somerset.

York forced into unconstitutional measures.

Warwick inheritance astonished even professional lawyers; Cont. Croyl. p. 557.

[1] Gascoigne, Introduction, p. lviii.

[2] Above, p. 19.

[3] Const. Hist. iii. 156.

[4] Ib. 155.

[5] 'The one sound administrator left;' ib.

[6] Cf. Eng. Chron. p. 99.

competent hands which ruled it. Had he been allowed to attain to power in the ordinary way, he would probably have been the means of conferring great advantages on England. This seems proved by the beneficial results of his rule when, as during his first Protectorate, he had a recognized constitutional position. His second Protectorate was too short to enable him to effect anything. But on both occasions he showed an anxious desire that his authority should be strictly defined and precisely limited, which was in striking contrast with the way in which Gloucester on a similar occasion grasped at an extension of his powers. For the final step taken by York in laying claim to the crown there is absolutely no justification on constitutional grounds, except in the eyes of those who hold a theory of royalty according to which there does not exist probably a single legitimate sovereign in the world. The right of the house of Lancaster as resting on prescription was far too strong to be set aside for a mere defect of genealogy[1]. But York was forced into this step, partly because he had learned by experience that from the rancour of Margaret he could be safe only on the throne, partly because she had so thoroughly identified the dynasty with the misgovernment of a party, that a change of government implied a change of dynasty also. And though the agreement made with York as to the succession, and the subsequent acceptance in Parliament of Edward IV, wore the guise of a legitimist restoration, that was only the outward aspect of the change. The real grounds of it lay much deeper. It was made possible, not by the goodness of the Yorkist pedigree, but by the badness of the Lancastrian government. And the Speaker of the House of Commons, in his address to the crown on the latter occasion, showed that the Commons were aware that

His claim to the crown indefensible.

The accession of Edward IV in form only a legitimist restoration.

[1] This prescriptive right was well stated by the Lords in their reply to York's claim; Rot. Parl. v. 376 b. Better still, perhaps, by Henry himself in the touching words preserved by his panegyrist Blakman, pp. 303, 305 (see them cited, S. C. H. iii. 201). It is well stated also by Hallam, M. A. iii. 195. Cf. Fortescue, De Titulo Edwardi, etc., cc. 9, 10, 13.

there were reasons for the change other than genealogical[1].

Later Lancastrian rule unconstitutional.

Nor can it be said that it was only by weakness that the house of Lancaster fell. From the death of Cardinal Beaufort in 1447 the rule of Henry VI, or rather of Margaret and her ministers, was not merely weak but flagrantly unconstitutional. It violated in the most essential points the compact by which the house of Lancaster came to the throne. By its steady maintenance of ministers whom the nation distrusted and abhorred, by its disregard to the wishes of the nation constitutionally expressed, by its attempts to tamper with the independence and liberties of Parliament[2], that house destroyed its own best title to the throne; and its fate, however melancholy, cannot be called undeserved. Dr. Stubbs has said from his own point of view that 'the acquittal of the house of Lancaster does not imply the condemnation of the house of York[3].' From the point of view here taken it would be equally true to say, that the condemnation of the house of Lancaster does not imply the acquittal of the house of York. And yet the latter has been very unfortunate, in that it has

[1] Some extracts from this speech are given in the notes to Chap. xix.

[2] The imprisonment of Young in 1451 for proposing in Parliament that York should be declared heir to the crown was a flagrant attack on what Hallam justly calls one of the ramparts of the Constitution, freedom of debate. There was nothing illegal or unconstitutional in Young's proposal. The causing Parliament to meet in out-of-the-way places, and proroguing it frequently, till the members, out of very weariness, passed the court measures, is distinctly complained of by Gascoigne. At the Parliament of Leicester in 1450, 'dictum fuit in publico quod nisi communitas Angliæ articulis propositis consentiret, parliamentum non finiretur, et plures minas et a rege et a suis juvenibus consiliariis sustinuit communitas istius parliamenti;' p. 189. But the climax was reached at the Parliament of Coventry in 1459, where the Yorkists were attainted, when 'no time was given for the [Yorkist] earls to pack the House of Commons; *the knights of the shire were chosen on the nomination of the Lancastrian leaders*;' S. C. H. iii. 179. (The italics are mine.) The petition of the sheriffs for indemnity was not merely, as Dr. Stubbs says, on account of the haste with which the elections were held, but because they had been made in virtue of letters of privy seal instead of writs under the great seal. The parliament was illegally summoned *ab initio*, and could not legalize itself; Rot. Parl. v. 367; cf. ib. 374; Eng. Chron. p. 83.

[3] Const. Hist. iii. 286.

The House of York unfortunate in history.

been judged in history for the most part not by Richard Duke of York, but by Richard Duke of Gloucester, and worse still by Edward Earl of March. The defeats of Wakefield and St. Alban's did no lasting injury to the Yorkist cause, but they caused incalculable harm to England. They gave her as king, instead of a tried and experienced statesman, who, whatever his ambition, or even (if the reader should so determine) unscrupulousness, always manifested ability and circumspection, a showy and self-indulgent youth, whose undoubted abilities were balanced by no corresponding sense of duty; but who might under his father's training have developed into something much better than what he ultimately became. The personal character of Richard Duke of York, his actual government in France[1], in Ireland[2], and in England during his first Protectorate, warrant us in believing that he would have ruled very differently from Edward IV. But further, he would have reigned under very different circumstances. Had the civil war been terminated by a conscientious adherence to the agreement made in the Parliament of 1460, there would not have been that weakening of the old nobility[3], that weariness of anarchy on the part of the people, which gave Edward IV and the Tudors the opportunity they enjoyed of establishing a despotism. Edward himself after his father's death had no choice but to go forward. Margaret's proceedings had made it plain that only as king could he be safe. He must either succeed in that, or perish as his father had perished. It was absurd to

Comparison of Edward IV with his father in character and position.

Edward IV obliged to seize the throne.

[1] S. C. H. iii. 153; English in France, II. xxix. ff.

[2] S. C. H. iii. 153. According to Hall (p. 219), it was openly said that if he who 'had brought that rude and savage nation to ciuile fashion . . . once ruled in England, [he] wolde depose euil counsaillers, correct euil judges, and reforme all matters amisse, and unamended.'

[3] The Croyland Continuator speaks of the civil war as 'omnium pene procerum regni luenda morticinis,' p. 529; and modern historians have repeated the statement. Mr. Oliphant has however proved that the Tudor axe had more to do with the extinction of the old nobility than Plantagenet dissensions; Duke and Scholar, pp. 139–149. Fortescue himself says, 'per bella intestina non paucis extinctis proceribus;' Works, p. 63*.

suppose that he could be bound by a compromise, which his opponents had been the first to break. And no one can therefore blame him for seating himself on the throne.

Divisions of his reign.

The reign of Edward IV is divided into two nearly equal periods by his exile and the brief restoration of his deposed rival (Oct. 1470–April 1471). The former period is marked by many of the characteristics of the late reign, whereas it is in the latter that we must chiefly seek for those indications of a newer state of things which led a brilliant modern writer[1] to break through the old-fashioned divisions of English history, and date the beginning of personal monarchy from the accession of Edward IV.

Desire of Edward IV to do justice.

At first Edward seems to have been sincerely anxious that justice should be done[2]. But partly because the evils were too deeply seated to yield at once to treatment, partly because Edward either did not possess, or would not exert himself to show, that administrative capacity for which his father had been so distinguished, the old bad state of things in the main continued[3]. There are the same local disorders, the same complaints of defective administration of justice, the same rivalries between the great lords, the same tendency to make use of personal influence to defeat the ends for which government ought to exist. The number of the great lords was somewhat diminished, but for the present their power was rather increased than lessened by being concentrated in fewer hands. Warwick's possessions are said by a contemporary to have been more than double those of any subject before his time[4]. The power of the Nevilles was in fact very oppressive to Edward. They were to him what the Percies had been to Henry IV, what Buckingham afterwards was to Richard III. Up to the time of the declaration of

Continuance of the old evils.

Power of the Nevilles.

[1] Mr. Green.

[2] See notes to Chap. xix. Cf. Waurin, ii. 299: 'il y sema raison et justice en lieu de rapine et desordonnance.'

[3] Many of the examples given in the notes above (pp. 20–1, 23, 25, 29–30, 32) are from the reign of Edward IV. Cf. Three Fifteenth Cent. Chron. p. 181: 'Abundabant tunc in Anglia furta, homicidia et mala multa.'

[4] Hearne's Fragment, pp. 299 f. Cf. notes to Chaps. ix. and xvii.

Edward's marriage in 1464 he was mainly in their hands; after that date he attempted to free himself from them by raising up his wife's relations as a counterpoise to them; a policy which led to the renewal of the former troubles, and ultimately to his own expulsion from the kingdom.

Lancastrian restoration due to Edward's failure.

We have the express testimony of Warkworth that the restoration of Henry VI was rendered possible by the disappointment felt at the performances of Edward IV[1].

Of the action of the new government we can form no estimate. Its duration was too short, and most of the documents relating to it have perished[2]. Fortescue, as we shall see, drew up for it a programme of reform which is closely connected with our present work[3].

Change in Edward's government after his return.

After the restoration of Edward IV a distinct change for the worse takes place in his character and government. His administration was no doubt firmer, but also more cruel and suspicious. He was determined to indulge his love of ease and pleasure without disturbance, and he remorselessly crushed everything which threatened to become dangerous. The parties at the court continued and ran high, the Wydvilles on the one side, the other nobles on the other. It is possible that it was Edward's deliberate policy to secure his own independence by balancing one party against the other[4]; but the ultimate outcome of this policy was the deposition of his son and the ruin of his dynasty. In all this Edward showed how inferior he was in real statesmanship to Henry VII, whom Mr. Green has put down as a mere imitator of Edward IV. It would not be far from the truth to say that Edward's government had all the faults of that of Henry without any of its merits. Common to both kings were the desire to be financially independent of parliament[5], and many of the means which they took to secure that object. Both kings,

Comparison of Edward IV with Henry VII.

[1] See notes to Chap. xix.

[2] Chastellain, v. 489 f., says that Warwick used his power with great tyranny and cruelty.

[3] Below; pp. 70, 89.

[4] Ægidius Romanus reckons this among the 'cautelæ' of a tyrant: 'Rex autem non procurat divisiones et partes in regno;' De Regimine, III. ii. 10; cf. Bacon's Essay, 'Of Faction.'

[5] See notes to Chaps. v, xix.

to use Lord Bacon's words, made money out of their subjects for war, and out of their enemies for peace. Other sources of income which they had in common were the confiscated goods of opponents, benevolences, the fines resulting from the enforcement of obsolete statutes and rights of the crown, and the profits arising from mercantile speculations. These sources of income together with the grants of the clergy made Edward to some extent independent of his lay subjects, and the people so far attained the wish they had so often expressed, that the king should live of his own; with the result which might have been expected, that the voice of the nation was silenced, and the king did very much what he pleased. Financial measures.

Common again to both monarchs was the system of repression and espionage which they adopted. This was necessitated in Edward's case by the disgraceful treaty with France, which caused so much discontent, that the Croyland Continuator believes that the people would have risen, if only they could have found a leader[1]. The means and position of his humblest subjects were known to Edward in a way which reminds us not only of Henry VII, but of Burleigh and Walsingham[2]. And besides these evils which were common to both systems, the rule of Edward IV had demerits which were all its own. But the simplest test of the relative merits of Edward IV and Henry VII is to compare the state in which they respectively left the kingdom at their death. Henry left a united kingdom, an assured succession, a crown independent and secure from foreign interference. Edward left two bitter factions which he had fostered in life and idly fancied he could reconcile upon his death-bed, a revolution and a change of dynasty, and a crown the prize of the first pretender who could gain some foreign help. I have said[3] that the condemnation of the house of Lancaster Repressive system.

[1] p. 559.

[2] Ib. 562, 564. The Liber Niger of Edward IV curiously illustrates this point. The forty squires of the household are to be 'of sundry sheres, by whom it may be knowne the disposition of the countries;' Ordinances, &c., p. 45. This again is a 'cautela tyrannica;' Æg. Rom. u. s.

[3] Above, p. 35.

does not involve the acquittal of the house of York. Edward IV was probably the worst king, and certainly the worst man, who had occupied the English throne since John. And yet it is by him that the house of York is mainly judged in history. His father never had a fair chance; the reign of Edward V is merely the history of a revolution; while the government of Richard III, until it degenerated into a mere spasmodic attempt to maintain himself, was a conscious and somewhat theatrical reaction against Yorkist rule, rather than a specimen of it. Dr. Stubbs has truly and beautifully said, 'We cannot look without pity and sorrow on that generation of our fathers, whose virtues were exemplified in Henry of Lancaster, and its strength in Edward of York[1].'

The House of York mainly judged by Edward IV.

PART II.

LIFE OF SIR JOHN FORTESCUE.

Birth of Fortescue.

Such was the character of the period into which our author was born. Neither the place nor the date of his birth are known, but he belonged to a Devonshire family; and his descendant and latest biographer, Lord Clermont, combining a statement made by Fortescue himself in the *De Laudibus*[2], that no one could be made a sergeant-at-law till he had studied the law for sixteen years, with the fact that Fortescue became a sergeant in 1429 or 1430, places his birth about the middle of the last decade of the fourteenth century[3]. Mr. Foss on similar grounds places it 'about the close of the fourteenth century[4].' His father,

[1] Const. Hist, iii. 286.
[2] c. 50.
[3] Family History, 2nd ed., p. 51.
[4] Judges of England, iv. 309. Unfortunately there are passages in the *De Natura Legis Naturæ* which seem to conflict with the passage in the *De Laudibus*. In i. c. 43 Fortescue says, speaking of the laws of England, 'quarum peritiam studentes vix viginti annorum lucubrationibus adeo ad-

Sir John Fortescue, the second son of William Fortescue of Wimstone, Devon, fought at Agincourt under Henry V, and was made Governor of Meaux, the capital of La Brie, upon its capture in 1422. He seems to have died about 1435[1]. He had by his wife, who was the heiress of the family of Norreis, three sons. Sir Henry Fortescue, the eldest, was for a short time (June 1426–November 1427) Chief Justice of the Common Pleas in Ireland[2]; the second, Sir John Fortescue, is the subject of the present memoir; the youngest, Sir Richard Fortescue, was killed at the first battle of St. Alban's in 1455, fighting on the Lancastrian side[3]. According to Tanner, the future Chief Justice of England was educated at Exeter College, Oxford. He certainly was a member of Lincoln's Inn, of which institution he was made a Governor in 1425, 1426, and 1429[4]. Fortescue's description of the mode of life and study in the Inns of Court[5] has been so frequently quoted that I willingly refrain from repeating it here. It is tinged, like the whole of the work from which it is taken, with a very rosy colour.

Governor of Lincoln's Inn.

Equally well known is the description of the ceremony of making a sergeant-at-law[6], a degree which Fortescue

Sergeant-at-law.

quirunt ut ad infimum gradum in legibus illis . . . eligi mereantur;' Works, p. 108. The 'infimus gradus' must be that of apprentice-at-law, and would of course precede that of sergeant-at-law. (On Apprentices, see Foss, u. s. p. 24.) Again, in ii. c. 10 he says: 'Hæc satis novit scriptor horum, qui plusquam quadraginta annis studuit ac se exercuit in Legibus Regni illius, et tandem Judiciario officio ejusdem terræ suppremo diu functus est;' Works, pp. 124–5. If by this Fortescue means that he had studied and practised the English law for over forty years before his elevation to the bench in Jan. 1442 (and such certainly seems to be implied by the use of the word *tandem*), his birth would have to be thrown back at least as far as 1385. If, on the other hand, the forty years of study and practice include the nineteen years of Fortescue's judgeship, he cannot have been born earlier than 1400. And this *of the two* is the more probable date.

[1] Family History, p. 45.
[2] Ib. 44.
[3] Ib. 235.
[4] Ib. 51.
[5] De Laudibus, c. 49.
[6] De Laudibus, c. 50. The dress which Fortescue describes seems not to have been peculiar to sergeants-at-law, but common to them with other sergeants. The sergeants of the Counting-house were to wear 'hoodes furred with whyte lambe and a coyfe of sylk, whyte;' Ordinances, p. 65.

took, as we have seen, in 1429 or 1430[1]. It was an extremely costly process[2], but it had its compensation in the increased amount of practice which it brought. This seems to have held good in Fortescue's own case. It is only after he became a sergeant that his name begins to appear in the Year Books[3]. As a barrister he seems to have gone the Western circuit, which would perhaps be the natural one for a Devonshire man to choose. At least in the *De Laudibus*[4] he mentions having been present on two occasions at the gaol delivery at Salisbury, on the first of which a woman was condemned to be burnt for the murder of her husband, while on the second occasion a servant of the murdered man confessed that he alone had been guilty of the crime. The judge, who was the same on both occasions, often declared to Fortescue that he could never overcome the remorse which he felt for the unjust condemnation of the woman. Fortescue characteristically uses the incident to prove that 'the law's delays' are not always prejudicial to the cause of justice.

Marriage. He married before September, 1436[5], Isabella or Elizabeth[6], heiress of John Jamyss, Esquire, of Philip's Norton, near Bath, where in 1441 he acquired certain lands and messuages by grant of the prior and convent of Hinton-Charterhouse to him and his wife and the heirs

[1] The former is the date given by Mr. Foss, u. s. p. 309, the latter by Lord Clermont; u. s. p. 52.

[2] The expense had perhaps something to do with the unwillingness of apprentices to take the degree of sergeant. Cf. the oft-quoted case, Rot. Parl. iv. 107 b, where certain apprentices were summoned before Parliament because they had not obeyed the King's writ to that effect.

[3] Foss, u. s.

[4] c. 53.

[5] His wife is mentioned in a deed of 14 Hen. VI, cited in the Biogr. Brit. iii. 1986. This regnal year extended from Sept. 1, 1435, to Aug. 31, 1436.

[6] In the deed just mentioned, and also in that to be cited in the next note, Fortescue's wife is called Isabella. But she is called Elizabeth in the letters of fraternity granted to her and her husband by Christ Church, Canterbury, in 1447; below, p. 48. The two names were used as identical in the Middle Ages. This may have helped to cause the mistake (which Mr. Foss has not escaped) of confounding the wife of the Chief Justice with Elizabeth daughter of Sir Miles Stapleton, the second wife of Sir John Fortescue of Punsbourne; Family History, p. 53.

male of their bodies for ever, for a reserved rent of one mark annually. As one of these tenements was then occupied by his wife's mother, it may perhaps be conjectured that this was merely a re-grant to Fortescue and his wife of lands formerly held by the father of the latter. The grant was confirmed by the crown in 1443[1]. He had previously acquired part of his father's property in Devonshire by grant of his elder brother Henry in 1435-6[2]. In October, 1452, he acquired the manor of Geddynghalle and other lands in Suffolk[3]. In 1456 he purchased the reversion of the manor of Ebrington, in Gloucestershire, of Sir Robert Corbet for £151. He had not come into possession of this estate at the time of his attainder in November, 1461[4]. He had also before that date

Property.

[1] This confirmation embodying the original grant is printed in full by Lord Clermont, u. s., pp. 102–3.

[2] Ib. 50, note 3. Of these lands Fortescue divested himself in favour of his son, soon after the marriage of the latter in 1454.

[3] Rot. Claus. 31 Hen. VI, memb. 32, dorso. This purchase was made from the same person, Sir Robert Corbet, and vested in the same body of feoffees as the reversion of the manor of Ebrington to be mentioned next. This was probably the same Sir Robert Corbet whose son married Fortescue's daughter Maud in 1455, but afterwards deserted her; Family History, p. 54.

[4] In Rot. Claus. 35 Hen. VI. memb. 9, dorso, there is a release in Latin by Sir Robert Corbet of the reversion of the manor of Ebrington to John Fortescue and certain co-feoffees, dated the Feast of St. Margaret, 34 Hen. VI, i.e. July 20, 1456. This document is evidently alluded to in one given by Lord Clermont from Campbell's Chancellors, i. 373, and dated Dec. 5, 35 Hen. VI, i.e. 1456. The inquisition taken at Cirencester Nov. 4, 1467 (Inq. p.m. 7 Edw. IV, No. 50), records the grant of the manor of Ebrington to John Grevill, Esq., and his wife Jocosa for their lives, with remainder to Guy Corbet, of the county of Suffolk, and his heirs. John Grevill was dead, but his wife was still alive. By the death of Guy Corbet the right of reversion descended to Sir Robert Corbet, his son and heir, who had by a fine levied before Prisot and other Justices on the morrow of the Purification, 34 Hen. VI, i.e. Feb. 3, 1456, granted it to John Fortescue, Kt., and the co-feoffees mentioned above; the grant being, as the jury affirmed, to the use of the said John Fortescue. On June 28, 1468, Edward IV granted to John Lord Wenlok certain lands which had belonged to Fortescue in the counties of Middlesex, Hertford (not Hereford, as stated in Cal. Rot. Pat. p. 314 a), Somerset, and Wilts, and the reversion of the manor of Ebrington after the death of Jocosa Grevill (not the manor itself, as stated in Cal. Rot. Pat. u. s.); Rot. Pat. 8 Edw. IV. Pat. i. memb. 4. I cannot therefore understand the statement in Atkyns' Gloucestershire, p. 425 (copied by Rudder, p. 434, and Lord Clermont, p. 59), for which no authority is given,

become possessed of property in Wilts, Herts, and Middlesex[1]. In May, 1457, in conjunction with his son Martin and the latter's wife Elizabeth, he acquired land at Efford, in the parish of Holbeton, in Devonshire[2]. So that at the time of his attainder Fortescue must have been a considerable landowner.

Life as a barrister.

If we may transfer to the case of Fortescue what we learn from the Paston Correspondence as to the mode of life of a barrister in those days, we may imagine him during this period of his life residing on one of his country estates, perhaps at Philip's Norton, going up to town for the law-terms[3], where he may have had chambers in Lincoln's Inn[4], and receiving perhaps, as opportunity

that in 7 Edw. IV the manor of Ebrington was granted to Sir John Burg or Brug, who died seised of it in 11 Edw. IV. The lands in Somerset would be Fortescue's wife's estate at Philip's Norton. How or when the property in Herts, Wilts, and Middlesex was acquired I do not know.

[1] See last note. The inquisition taken before the Escheator of Wilts (Inq. p. m., u. s.) is printed by Lord Clermont; u. s., p. 105. It mentions lands &c. at Kingston Deverill, Trowbridge, Hilperton, and Bradford-on-Avon. In Rot. Pat. 5 Edw. IV. Pat. i. memb. 9, there is a grant dated April 20, 1464, of certain lands late belonging to Sir John Fortescue at Great Linford, Bucks. But from Rot. Claus. 33 Hen. VI. memb. 15, dorso; ib. memb. 21, dorso, it is clear that this was a trust estate, and did not belong to Fortescue himself. Other instances in which I have found Fortescue's name as trustee or co-feoffee are Rot. Clause, 7 Hen. VI. memb. 6, dorso; ib. 13 Hen. VI. memb. 12, dorso; ib. 24 Hen. VI. memb. 20, dorso; ib. 38 Hen. IV. memb. 9, dorso; ib. 2 Edw. IV. memb. 21, dorso. (The document, though enrolled in 1462, is dated June 8, 1449.) On May 20, 1457, Fortescue and Thomas Yong, as executors of the will of John Burton, late of Bristol, merchant, obtained licence to endow a chantry at the altar of St. John the Baptist in the church of St. Thomas the Martyr in Bristol, with lands &c. held of the king in free burgage in Bristol. The inquisition *ad quod damnum* was taken on the Monday before St. Gregory the Martyr, 38 Hen. VI; Inq. a. q. d. 38 Hen. VI, No. 7. In Oct. 1441 Fortescue had become a co-feoffee of John Burton in certain lands &c. in Bristol; Rot. Claus. 20 Hen. VI. memb. 20, dorso. Another instance in which we find Fortescue acting as executor of a will is in Inq. a. q. d. 36 Hen. VI, No. 1.

[2] Rot. Claus. 35 Hen. VI. memb. 9, dorso.

[3] Unless the law-courts happened to be suspended on account of the plague, as was the case in Michaelmas Term, 1434; P. P. C. iv. 282.

[4] John Paston resided during term time in the Inner Temple, which in Paston Letters (i. 41) is called 'your *college* the Inner Temple.' Perhaps after Fortescue became a sergeant, and almost certainly after he became a judge

offered, supplies of provisions from his wife in the country[1]. And when the chief industry of the country was agriculture, everything had to give way to the exigencies of harvest. The legal and academical long vacations, the parliamentary recess, all owed their origin to this consideration[2].

Fortescue Judge of Assize.

In 1440 and 1441 Fortescue acted as Judge of Assize on the Norfolk circuit, and in Easter Term, 1441, he was appointed a King's Sergeant[3].

In January, 1442, he was made, without any intermediate

in 1442, he would have chambers in Sergeants' Inn. Mr. Foss is of opinion that the judges and sergeants first had an inn *in common* about 1440–1; u. s. p. 247.

[1] 'I have do purveyed in this wareyn xj^{xx} rabets and sent up be the berer herof;' Margaret Paston to her husband, ii. 21. See Chap. xv. below, and the notes thereto.

[2] See S. C. H. i. 379. Cf. Paston Letters, i. 399: 'I suppose lerned men (i. e. counsel) wyll not be easy for to gete be cause of this besy time of hervest;' cf. ib. 243. In Aug. 1433 the king prorogued Parliament because autumn was approaching, 'in quo Magnatibus circa suos Recreationes et Deductus, ipsisque Communibus circa suarum messium congregationem intendere competebat similiter;' Rot. Parl. iv. 420 b, (and so frequently). For the effect of the harvest on the meetings of the Privy Council, see notes to Chap. xv. A glance at the Syllabus to Rymer's Fœdera will show that the documents dated during the long vacation are very sparse.

[3] On Sergeants-at-law and King's Sergeants, cf. Foss, iii. 46–8; iv. 21–2, 195–8, 240–4. Coke says that in a general sense all Sergeants are King's Sergeants, as being called by the king's writ, and at first perhaps all Sergeants were called King's Sergeants. But at this time certainly there were King's Sergeants who received their offices by patent. One of their duties was to assist poor suitors to the Council, which they were bound to do gratuitously; P. P. C. iii. 150, 217; iv. 63. They might also, like the judges, be summoned when the Council required advice on legal points; ib. iii. 117; v. 35, 44; cf. 77. They might similarly be called upon to assist the triers of petitions in Parliament; Rot. Parl. iii. 455 a, and passim. In one case we find a petition referred to them for consideration, and the matter adjourned to the next Parliament; ib. iv. 17 b; cf. v. 42 a, where the Lords, by the advice of the King's Sergeants, made an unauthorized addition to the answer to a petition in Parliament. The decision of the Lords in the case of Thorpe was communicated to the Commons by one of the King's Sergeants, 'for as moche as they were materes in lawe;' ib. 240 a. The Duke of York's claim to the throne in 1460 was referred to the King's Sergeants and Attorney, who tried to excuse themselves, but were told by the Lords, 'that they myght not so be excused, for they were the kynges particuler counseillers, and therefore they had their fees and wages;' ib. 376. In one case we find a King's Sergeant appointed 'hac vice tantum;' Cal. Rot. Pat. p. 296 a.

Chief Justice of the King's Bench.

step, Chief Justice of the King's Bench, in succession to Sir John Hody, with a salary of £120 and allowances of £8 13*s.* 6*d.* for robes at Christmas and Whitsuntide. In February, 1442, and May, 1443, he received grants of an annual tun of wine. In March, 1447, he received an annual addition of £40 to his salary[1]. Sometime after his appointment as Chief Justice, and before May, 1443, he was knighted[2].

In October, 1442, he was required to certify the King's Council of the tenor of certain indictments brought maliciously, as was alleged, against Robert Wells, abbot 'of Tourhille beside London,' and others[3]. About the same time he and the other Judges of the King's Bench were ordered to 'committe to baille' 140 of the adherents of Sir William Boneville[4]. Early in 1443 he was sent with others on a special commission into Norfolk with reference to disturbances which had broken out in Norwich, in consequence of the attempt of the Prior of Christchurch, Norwich, to impose certain new ecclesiastical dues[5]. On March 4th, 1443, a special letter of thanks for 'his grete laboures' was ordered by the council to be sent to him in the king's name[6]. On the 14th he and the Chief Justice of the Common Pleas were ordered to send to the council 'the names of indifferent persones suche [as] may be maade justices of the pees and sherriefs,' in Norfolk[7]. On the 23rd, he and his colleague Westbury attended the meeting of the Privy Council and 'declareden alle theire

Sits on a special commission in Norfolk.

[1] The patents of Fortescue's appointments and grants are printed in full by Lord Clermont; u. s. pp. 103–4. In the Resumption Act of 1455 exception was made in favour of 'the Graunte .... to John Fortescu Knyght, of 11 Tunne of Wyne to be taken yerely in the Porte of London for terme of his lif;' Rot. Parl. v. 317 a. According to the Liber Niger the Chief Justice of the Common Pleas received two tuns of wine regularly in return for the legal assistance which he gave to the royal household, of which he was reckoned 'a grete membre;' Ordinances, &c., p. 29.

[2] I find him mentioned as Sir John Fortescue first on May 8, 1443; P. P. C. v. 268. He seems not to have been a knight on Oct. 11, 1442; ib. 215. Some intervening notices of him in the records of the Privy Council are inconclusive on the point.

[3] Ib. 215.

[4] Ib. 221.

[5] Ib. cxxiii ff.

[6] Ib. 231–2.

[7] Ib. 243.

demenyng at Norwiche and in Norffolke[1].' Fortescue was present in the council on April 3rd and May 3rd, 1443[2], and on May 8th the council ordered a warrant to be made out for the payment of fifty marks to him for his labours and expenses in Norfolk[3]. Two days later the two Chief Justices were summoned to the council with reference to certain riotous attacks which had been made on Cardinal Kemp's estates in Yorkshire[4], arising out of the manner in which he had exercised his spiritual jurisdiction as Archbishop of York; they were ordered to make their report to the council on the following day[5]. This they did in the presence of a very full meeting of the council and of 'alle the remenant of the Juges[6].' In consequence of their advice Lords Dorset and Willoughby and the two Chief Justices themselves were a week later 'assigned to go and sitte in Yorkshire upon an oier and terminer[7].' On July 11th Fortescue again attended the council, perhaps with reference to the termination of this matter[8].

In Yorkshire.

In January, 1444, we learn that Fortescue had for some time been suffering from sciatica, and his colleague William Paston being also unwell, the assizes at East Grinstead had to 'discontynue *puer noun venue dez Justicez*[9].' In the Parliament of February, 1445, Fortescue was appointed one of the triers of petitions; and was reappointed in every subsequent Parliament up to that of 1455 inclusive[10]. The next fact that we learn about Fortescue is his refusal to obey the king's command to deliver out of Walling-

Ill of sciatica.

Trier of petitions in Parliament.

Refuses to deliver a prisoner.

[1] P. P. C. v. 247-9.
[2] Ib. 256, 266.
[3] Ib. 268.
[4] Writs to the Sheriff and Keepers of the Peace in Yorkshire, dated May 12, are in Rymer, xi. 27-8.
[5] P. P. C. v. 269.
[6] Ib. 270-1.
[7] Ib. 273.
[8] Ib. 304. These attendances at the Privy Council do not, I think, warrant us in speaking of Fortescue as a Privy Councillor, as Lord Clermont does; u. s. p. 56. He merely attended in his capacity as Judge to give legal advice to the Council; cf. Chap. xv. below, and the notes thereto.
[9] Paston Letters, i. 50.
[10] See the Rolls of Parliament during those years. Fortescue's Summonses to Parliament may be found in the Lords' Report, i. App. i. Part ii. 909, 914, 919, 924, 928, 933, 937, 942, 946. They extend from 1445 to 1460.

ford Castle a prisoner named Thomas Kerver, who had been found guilty of high treason; the ground of his refusal being that what was demanded of him exceeded his powers. We know too little of the circumstances of the case to pass a judgement on Fortescue's conduct in the matter. But the evident desire of the king that the fact of the pardon should be kept secret is calculated to awaken suspicion[1]. In the same year Fortescue and his wife received the privileges of fraternity from the convent of Christ Church, Canterbury[2]. In 1447–8 he was concerned as arbitrator with the Chancellor and Chief Justice

[1] Excerpta Historica, pp. 390, 280.

[2] Archiv. Ecclesie Xpi Cantuar. Reg. S. fol. 172 a: 'Littera fraternitatis Johannis Fortescu Capitalis Justiciarii Dñi Regis ad placita coram Rege et Dñe Elizabethe uxoris ejus.' I owe my knowledge of the existence of this document to Dr. Sheppard's report on the Canterbury MSS. in the appendix to the ninth volume of the Historical Manuscripts' Commission, while for a transcript of it I am indebted to Dr. Sheppard's liberality through the kind mediation of the Rev. Professor Rawlinson, Canon of Canterbury. After an exordium on the efficacy of prayer, which Dr. Sheppard informs me is common with slight variations to all the Canterbury letters of confraternity, the document proceeds as follows: 'ea propter tam salutaribus monitis pia ac sincera devocione pensatis devoti ac supplices in Xo. hujusmodi carismatum emulatores magnifice nobilitatis vir et miles egregius Dñs. Johannes Fortescu Capitalis Justiciarius Dñi. Regis ad placita coram ipso Dño. Rege, vir equidem justus quem omnes diserti justum discernunt obsequuntur venerantur et diligunt, cum et omnibus velit prodesse sed obesse nulli, nemini nocens sed nocentes prohibens, ac eciam devotissima domina, Domina Elizabet conthoralis ejusdem matrimoniali sibi federe copulata, propter Deum et singularem devocionem quam habent et diucius habuisse dinoscuntur ad perinclitum et preciosum martyrem, Beatum Thomam, cujus corpus in dicta sacrosancta ecclesia jacet tumulatum, nobis humillime supplicaverunt quatinus ipsos nostris oracionibus ceterisque piis meritorum operibus communicato suffragio misericordissime uniremus. Unde devotis eorum precibus unanimiter inclinati, ac in Xpi gratia ejusque sanctissime matris et Virginis Marie, Beati Thome Martyris gloriosi ceterorumque prefate ecclesie patronorum meritis patrociniisque confisi, pro immensis beneficiis nobis et ecclesie nostre predicte hactenus impensis ipsos Dominum Fortescu et Dominam Elizabet conjugem suam ad plenum perpetue fraternitatis nostre consorcium .... admittimus .... per presentes..... Dat. in domo nostro Capitulari—die Mensis Octobris Anno Domini Millesimo CCCCmo XLVIImo.' The character given of Fortescue is of great interest. The 'immense benefits' which he had conferred upon the monastery may have been in the way of legal advice and assistance.

of the Common Pleas in a dispute which had arisen between the Cathedral and Corporation of Exeter as to their relative jurisdictions. Fortescue seems to have shown himself very friendly to the city, the capital of his native shire[1].

Fortescue's connexion with the trial of Suffolk.

In 1450 Fortescue was brought by his official position into connexion with the trial of the Duke of Suffolk. The Duke having admitted the existence of injurious reports against him 'almoost in every Commons mouth,' the Commons petitioned the King that he might be committed to ward. This was on the 26th of January. The following day the Lords consulted the judges as to whether common rumour was a legal ground of commitment. Fortescue in the name of his colleagues drew a distinction between misprisions and trespasses on the one hand, and felonies and treasons on the other. In the case of the former rumour was not a sufficient ground of commitment; implying apparently that in the case of the latter it was. Upon this the Lords resolved almost unanimously that, as no definite charge had been made, Suffolk should not be arrested. The next day the definite charges followed, and Suffolk was sent to the Tower. On Saturday, March 14, Fortescue was sent by the King to ask the Lords what advice they would give the King in the matter. The Lords deferred their answer till the following Monday, when nothing was done; and on Tuesday the 17th took place that unconstitutional arrangement which has been already commented upon[2]. In the Resumption Act which was passed this year Fortescue is twice specially exempted from its operation[3].

Fortescue sits on a special commission in Kent.

From a letter written Aug. 19, 1450, we learn that Fortescue and all the judges were then out of town, with the exception of Danvers who had just been raised to the bench, and that Fortescue had accompanied the Lord Chancellor and the Duke of Buckingham, who had been

[1] See Letters of John Shillingford, Mayor of Exeter (Camd. Soc.), esp. pp. 9, 37. A sketch of the controversy is given in the preface; cf. Family History, pp. 57–9.

[2] Above, pp. 10–1; Rot. Parl. v. 176, 182–3. [3] Ib. 187 b, 199 a.

sent into Kent to hold a special commission of oyer and terminer on those who had been concerned in the rising of Cade[1]. On June 2, 1451, another correspondent writes that Fortescue had been expecting every night for a week to have been assaulted in his house, but nothing had come of it; 'the more pity' adds the unfeeling writer[2]. Mr. Gairdner thinks that this was 'probably for no other reason than his high impartiality[3].' Lord Clermont attributes the animus of the writer to Yorkist sympathies[4], and we must attribute the threatened assaults to the same cause. Whatever may have been Fortescue's impartiality in purely legal matters, and there is no reason to doubt it, it is certain that in politics he was, as he himself confesses, 'a partial man[5],' or, as we might say, a party-man. And there is conclusive evidence that about this time he had unfortunately identified himself so closely with the party of Suffolk and Somerset, as to become involved, whether justly or unjustly, in their unpopularity. In the proclamation issued by Cade in the name of the Commons of Kent at the time of their rising the King is requested to send 'some trew Justyce wyth certeyn trew lords and knyghts' into Kent, to enquire of all 'traytors and brybors.' And it is added: 'to syt upon this enqwerye we refuse no juge except iij chefe juges, the which ben fals to beleve[6].'

In danger of assault.

He shares the unpopularity of the Court party.

[1] Paston Letters, i. 139. The sentence is obscurely worded, but the above seems to be the sense of it. 'The Chief Justice is not here, ne noon other Justice, except Danvers is now made Juge of the Comune Place, and is forth into Kent with the Lords.' The words 'is forth' &c. must, I think, refer to Fortescue. Mr. Gairdner has here copied a strange mis-statement of Fenn's that Hody was at this time Chief Justice. We have seen that Fortescue succeeded Hody as early as January 1442.

[2] 'The Chief Yistice hath waited to ben assauted all this sevenyght nyghtly in hes house, but nothing come as yett, the more pite;' ib. 185-6. Do the words 'hes house' imply that Fortescue had at this time a private house in London? We have seen that he had property in Middlesex; above, p. 44.

[3] Ib. lvii.

[4] u. s. p. 59.

[5] Works, p. 532.

[6] Three Fifteenth Century Chronicles, p. 98. The other two 'Chief Judges' were Sir John Prisot, Chief Justice of the Common Pleas, and Peter Arderne, Chief Baron of the Exchequer. The fact that Prisot was, with the exception of Fortescue, the only one of Henry VI's judges who was not re-appointed on the accession of Edward IV, seems to confirm the idea that he was a strong Lancastrian partizan. What

In the satirical dirge upon the death of Suffolk composed about the same time Fortescue is introduced along with others of the court party as taking part in this parody of a funeral service[1]. And his name occurs again in a list of unpopular persons indicted before the Chancellor (Kemp) and the Duke of Buckingham in August, 1451[2].

In February, 1454, the Lords consulted the judges with reference to the case of Thorpe. The answer given by Fortescue in the name of all his colleagues is well known. They refused to say anything which could be construed as a claim on their part to determine the privileges of Parliament, but they stated what the custom had been in previous cases[3]. Consulted on Thorpe's case.

In May of the following year took place the first battle of St. Alban's, in which, as we have seen, Fortescue's younger brother Sir Richard Fortescue was killed[4], an event which is not likely to have made him more favourably inclined towards the Yorkists. In June we hear that Sir William Oldhall the well-known Yorkist, who had been attainted in Parliament in June 1453, was waiting in sanctuary for the return of Fortescue to London, in order that he might sue in the King's Bench for the reversal of his outlawry. This he succeeded in effecting a few days later[5]. Death of his younger brother.

In February, 1456, we find a dispute between Sir Philip

Arderne had done to make himself unpopular I do not know.

[1] '*Beatus qui intelligit* and dredit also,
Seyth John Fortescw, all this fals treson.'
Three Fifteenth Cent. Chron., p. 102. In the shorter version of the same song printed by Mr. Wright, Political Songs, ii. 232 ff., the name of Fortescue does not occur.

[2] This list is printed by Mr. Wright, Political Songs, II. lvi. f. It is worth while to compare it with the song quoted in the last note. Very many of the names are the same in both. This list is dated August, 29 Hen. VI., i.e. 1451.

[3] Rot. Parl. v. 239 b. On the question of privilege involved in Thorpe's case, cf. S.C.H.iii. 491–2; Rogers, Gascoigne, p. xxxvi; Hatsell's Precedents, i. 28–35. According to the precedents laid down by Fortescue, it would seem that the imprisonment of Thorpe was not a breach of privilege, and such is Mr. Rogers' opinion. But even on the most unfavourable view the breach was trifling compared with that of which the other side had been guilty in the case of Young, for Thorpe's imprisonment did not arise, as Young's did, out of his conduct in Parliament.

[4] See Stowe, p. 399 b; above, p. 41.

[5] Paston Letters, i. 336; cf. ib. 343–4.

An arbitration case submitted to him.

Wentworth and Sir John Fastolf which had been submitted to arbitration referred by the arbitrators, by an arrangement not uncommon in those days, to the extra-judicial decision of Fortescue and Yelverton[1]. It would seem from a later notice that Fortescue brought the matter before the House of Lords[2]. In March, 1456, the judges were summoned to advise the council in regard to a difficulty which had arisen about the sheriffdom of Lincolnshire. Fortescue and Prisot for the rest declared, that the King had done wrong in appointing as Sheriff any but one of the three who had been nominated in the Exchequer in accordance with the Statute, and that any one thus illegally appointed could not be punished for refusing to serve. They advised compliance with the terms of the Statute, at once if possible, but at any rate at the next appointment of Sheriffs[3]. In May, John Paston was informed by a correspondent that some legal business of Sir John Fastolf's could not be proceeded with because Fortescue and almost all the judges were engaged at the Guildhall[4].

Summoned to advise the council.

Pacification of 1458.

The terms of the peace which Henry in 1458 succeeded in patching up between the Lancastrians and Yorkists are said in the document itself to have been drawn up after consultation with the judges among other persons[5]. We may therefore safely assume that Fortescue, both as the chief of the judges, and also as a prominent Lancastrian, was one of those who were consulted.

Parliament of Coventry.

Fortescue's activity.

The next year, after the dispersal of the Yorkist Lords at Ludlow, the Lancastrian Parliament was held at Coventry, Nov. 1459. This was the first Parliament since 1445 in which Fortescue was not a trier of petitions; the reason

[1] Paston Letters, i. 378.

[2] Ib. 410. It is no doubt in connexion with this matter that we find in the accounts of John Paston, who was Fastolf's counsel, the following entry, 'For wine and spice with Fortescu and Wentworth, 23*d.*;' ib. 434.

[3] P. P. C. vi. 331–2; cf. the Statutes there cited.

[4] Paston Letters, i. 384. This seems to refer to the special commission which sat to enquire into an attack made upon Italians resident in London. Of this commission Fortescue was a member; Fabyan, p. 630.

[5] Whethamstede, i. 300.

probably being that his services were required for more important and less impartial work. For it seems clear from two references in the Paston Letters that Fortescue had a large share in drawing up the measures passed in that Parliament against the defeated Yorkists[1]. He appears to have been in high spirits at the success of his party, for a letter written at Coventry during the parliament expressly notes that 'the Chief Justice is right herty[2].'

'A turning world.'

But the world, to use the contemporary expression, was soon to turn again[3]. The Yorkist victory of Northampton in July 1460 was followed by the Parliament of October in which the Duke of York claimed the crown. On this claim the Lords on Saturday Oct. 18th desired the opinion of the judges, but they on the following Monday utterly refused to meddle in a matter so much beyond their competence[4]. On this Dr. Stubbs remarks, 'Although Sir

The Judges consulted on the Duke of York's claim.

[1] The clearest of these passages is to be found at i. 535: 'A good thrifty man of this cuntre . . told me . . . that he herd Doctor Aleyn seyn after the Parlement of Coventre that yf the Lords that tyme reynyng and now discessid myte haf standyn in governans, that Fortesku the justice, Doctor Moreton, Jon Heydon, Thorp and he, schuld be made for evir; and yf it turnyd to contrary wyse, it schuld growe to her . . . uttyr destruccyon; for why, the parlyows writing and the myschevous inditing was ymaginid . . . by . . . her most malicyows conspiracye ayens the innocent lords, knytis, gentilis, and Commonys, and alle her issu perpetuel,' &c. Cf. ib. 522, a somewhat enigmatical passage, but to the same effect.

[2] Ib. 499. In this Parliament Fortescue was appointed one of a new body of feoffees which the king created and enfeoffed with certain lands &c. for the carrying out of his will. Sir John Prisot was another; and among both the old and the new feoffees are many of the names which occur in the song on Suffolk's death, and in the list of unpopular persons indicted at Rochester; above, p. 51. See the two lists of feoffees in Rot. Parl. v. 70 b; 355 b. The rancour of Margaret at this time is strikingly illustrated by a letter of De Brézé to Charles VII dated Feb. 24, 1460, in which it is said that if the negotiations which she was then carrying on with the French court should become known, her own party would combine with her enemies to put her to death. (Printed in Basin, iv. 358 ff.) In 1458, the year of the pacification with York, Margaret had been instigating Charles VII to send French troops to invade England; De Coussy, ed. Buchon, p. 209. On the political capital made by the Yorkists out of the French leanings of the court, cf. Basin, i. 296–7.

[3] 'Res Anglicanae multis varietatibus, prout nimis nota experientia indies docet, subjectae sunt,' says the Croyland Continuator with reference to this very crisis; p. 549.

[4] Rot. Parl. v. 376 a. It is to be

John Fortescue the Chief Justice afterwards wrote a treatise on the subject, the judges were not now prepared to answer[1].' But it is very curious that the short tract now first printed[2] in its entirety from the thirty-fifth volume of the Yelverton manuscripts, is placed in that volume after 'The title and clayme of the crowne by Richard duc of York[3],' and is entitled 'The replicacion made agenste the title and clayme by the Duc of Yorke to the Crownes and Reaumes of England and Fraunce.' The contents of the tract sufficiently show that it was written at a later period, especially the affecting allusion near the beginning to the author himself as 'the olde knighte exiled.' Still the fact that the tract is so placed, and so entitled, may perhaps be taken as indicating that Fortescue wished it to be regarded as embodying the reply which he would have made, if he had been able to open his mouth on that occasion.

Was Fortescue present in the Parliament of 1460?

The fact however that there is no record of Fortescue's having presided in the Court of King's Bench after Easter Term 1460[4] raises the question whether he may not have withdrawn with Margaret of Anjou to Wales and the North[5] after the battle of Northampton; in which case

noted that Fortescue is not here mentioned as the spokesman of the judges, as is generally the case when the judges are consulted in their corporate capacity either by Parliament or the Council. It cannot therefore be positively affirmed that he was present on the occasion. He was however certainly summoned to this Parliament; Lords' Report, u. s., p. 946. And the assertion of the judges that 'the mater was so high, and touched the Kyngs high estate and regalie, which is above the lawe and passed ther lernyng,' may be compared with Fortescue's excuse in the 'Declaration upon certain Writings' that he had not 'labored or studyed in any faculte except the lawes of this londe, in which the studientes lerne full lytell of the right of succession of Kyngdomes;' Works, p. 532.

[1] Const. Hist. iii. 185.

[2] Below, Appendix C.

[3] This 'title and clayme' is printed in Rot. Parl. v. 378, under the title 'Concordia facta inter Regem et prefatum Ducem.' It is printed also in Davies' Engl. Chron. pp. 100 ff. To it are appended in all three places the awards by which Henry was to retain the crown during his life, and the oath taken by the Duke to him.

[4] If I have rightly manipulated the tables in Sir H. Nicolas' Chronology of History, pp. 386–7, Easter Term in 1460 began on April 30th, and ended on May 26th.

[5] Margaret and the Prince were still in Wales in the middle of October, 1460; Paston Letters, i. 525–6. In Scotland they were received by the widowed queen

we may imagine him to have been present at the battle of Wakefield and the second battle of St. Alban's[1], as he certainly was at the battle of Towton on March 29, 1461. Sometime between the two last-named battles at the latest Fortescue must have joined the forces of his royal master and mistress.

The Lancastrian cause not hopeless after Towton.

With our knowledge of the event which, it has been said, deprives the study of history of so much of its interest and value, we are inclined to regard the Lancastrian cause as finally lost after Towton. But that was by no means the contemporary view. The struggle was continued in the North almost without intermission till 1464[2], and the Lancastrians, as we shall see, had the largest schemes on foot. From the date of Towton moreover the fortunes and movements of Sir John Fortescue become so closely connected with those of the fallen royal family, that we must endeavour to follow these as far as the scanty and often

in the Abbey of Lincluden, Jan. 1461. The visit lasted ten or twelve days. The terms agreed upon seem to have included the marriage of Prince Edward to Princess Margaret of Scotland, and the surrender of Berwick; Exchequer Rolls of Scotland, ed. Burnett, VII. xxxv. In Basin, iv. 357–8, there is a bond dated York, Jan. 20th, 1460 (O. S.), signed by Exeter, Somerset, and other Lancastrian lords in Margaret's presence, in which they undertake to induce Henry VI to consent to the terms 'moeved and commoned at the College of Lyncludan . . . the v^te^ day of the saide moneth,' whence it appears that they anticipated some difficulty. The siege of Roxburgh, in which James II lost his life, had been undertaken in the Lancastrian interest; Exch. Rolls, u. s., VI. lxiii f., VII. xxxv. In 1460, before the battle of Northampton, Somerset, then at Guisnes, had offered to surrender that fortress to Charles the Bold. This was only prevented by the opposition of Philip the Good. There seems to have been no English interest which Margaret and her party were not willing to betray in order to establish their own power.

[1] This is however not very likely; for the Act of Attainder which mentions the presence of Fortescue at Towton and elsewhere, says nothing of his having been at Wakefield or St. Alban's. On the whole I should surmise that Fortescue joined the Lancastrian forces when they began to withdraw towards the North, after the attitude of the citizens of London had made it clear that they could not safely attempt to enter the city; on which see Waurin, ed. Dupont. ii. 266. Hardyng (ed. Ellis, p. 405) says that Fortescue withdrew to the North after St. Alban's, but he does not say distinctly whether he was present at the battle or not.

[2] Cf. Gairdner, Three Fifteenth Cent. Chron. p. xxiv. As early as July 1463 there was a report in France that Henry VI had been restored; Waurin, u. s. ii. 317–8, *note*.

contradictory notices of the chronicles and correspondence of the time will permit.

The Lancastrians retire northwards.

After Towton the defeated Lancastrians retired northwards. A letter which reached London five days after the battle states that Henry, Margaret, and their son Edward with their adherents had fled to Scotland, but were being pursued[1]. A fortnight later the news in London was that Henry, and perhaps also Margaret, Edward, and the Duke of Somerset, were besieged at a place the exact name of which the writer confesses himself unable to give, and the locality of which he has possibly mistaken, but which was perhaps Carham, on the borders of England and Scotland[2].

Agreement with the Scots.

From this place, wherever it was, the royal fugitives must have soon made their escape, for a week after the date of this letter the agreement was signed whereby Berwick was surrendered to the Scots, the Scots in return promising to assist in an invasion of England in the Lancastrian interest[3]. Accordingly, from another letter written about the beginning of May we learn that Berwick was full of Scots, with whom another battle was expected shortly[4]. Carlisle would have shared the fate of Berwick only it was better defended[5]. We may trust that Fortescue had nothing to do with ad-

[1] Paston Letters, ii. 5. According to Waurin (ii. 289 f.), Edward remained eight days at York, when it was agreed that as Henry and Margaret were already out of the kingdom, it was useless to pursue them.

[2] Paston Letters, ii. 7. 'I herd .. that Herry the Sext is in a place in York schire is calle Coroumbr; suche a name it hath, or muche lyke. And there is sege leyde abowte, &c. .... Sum say the Qwen, Somerset and the Prince schuld be there.' Almost all the authorities seem to represent the Lancastrians as taking refuge in Scotland immediately after Towton. It seems therefore hardly likely that three weeks after the battle they would be still in Yorkshire. See especially Waurin quoted in the last note. Duclerq however confirms to some extent the account given in the Paston Letters; Liv. iv. ch. xxiv (éd. Reiffenberg, iii. 119 f.). Cf. Monstrelet, iii. f. 84 d.

[3] This is from the Act of Attainder, Rot. Parl. v. 478 a. Hardyng (p. 406) speaks of Fortescue's retirement into Scotland.

[4] Paston Letters, ii. 9.

[5] Rot. Parl. v. 478 b. According to Edward IV, Margaret had promised to give up seven 'sherifwicks' of England to the Scots, who with the French were to invade the kingdom, of which her uncle Charles of Anjou was to have the 'governance;' Halliwell's Letters, i. 123–130. This is of course an *ex parte* statement. Philip of Burgundy tried to break off the alliance of the Scots with Margaret, but in vain; Waurin, ii. 301-5; Monstrelet, u. s.; Duclerq, u. s.

vising this disgraceful compact[1]. In the Act of Attainder, Henry and others, among whom Fortescue is expressly named, are charged with 'rearing war' against Edward IV at Ryton and Brancepeth on June 26th, 1461[2]. This may have been an inroad assisted by the Scots in fulfilment of the agreement of April 25th. It was probably about this time that Somerset, Lord Hungerford, and Sir Robert Whitingham were sent to France to solicit aid for the Lancastrian cause. Their movements were disconcerted by the death of Charles VII, which occurred on July 22nd, 1461; and as the safe-conduct which Somerset held was made out in a fictitious name, he was arrested and imprisoned[3]. From a letter written by his colleagues on August 30th we learn that they were detained in Normandy, but were expecting to have an interview with the new king in a few

Embassy to France.

[1] He is not named in the Act of Attainder among those who advised the giving up of Berwick and Carlisle; though Hardyng (u. s.) says that the surrender was made 'by whole assent of his [Henry's] simple counsaill.'

[2] Rot. Parl. u. s. Lord Clermont regards this fighting at Brancepeth and Ryton as part of the skirmishing done by the retiring Lancastrians on their retreat to the border. I am inclined, for the reasons given above, to regard it as marking a new inroad. If this surmise is correct, it diminishes very much the period during which Fortescue could have been appointed Chancellor by Henry VI on English soil. The only period during which such an appointment could have been legally effective was the short interval between the battle of St. Alban's on February 17, and the proclamation of Edward IV on March 4. Still Lord Clermont, prolonging as he does the sojourn of Henry VI on the English side of the border till the end of June, thinks that there was a period of four months during which he was master of at least a part of his dominions, and during which his appointment of a Chancellor would not be altogether devoid of reality. The question is not very important. Fortescue can never have been Chancellor in any effective sense. He cannot have had possession of the great seal in England. The seal which the Lancastrians used in exile must have been fabricated later. On the whole I am inclined to think that Fortescue was only Chancellor 'in partibus infidelium.' Selden's comparison of the case of Clarendon under Charles II before the restoration is extremely apt. It is some slight confirmation of this view that in the *De Naturâ Legis Naturæ* Fortescue, though as we have seen he mentions the fact of his having been Chief Justice, never alludes to himself as Chancellor, a claim which appears first in the *De Laudibus*. Selden has led Mr. Foss into error by asserting that in the 'Declaration upon certain Writings' Fortescue is addressed as 'Chief Chancellor' of the late king. The very phrase should have awakened suspicion. The true reading is 'Chief Counceller;' Works, p. 523.

[3] Chastellain, iv. 65–6.

days[1]. A month later the Lancastrian envoys were still detained in Normandy[2]. Afterwards their prospects improved. Somerset was released at the special intercession of Charles the Bold, who, in opposition to his father, favoured the Lancastrian cause. He was present at the interview of Charles and Louis XI at Tours, Nov.–Dec. 1461, and received some help in money from the latter. Thence he had intended to return to Scotland, but hearing that Edward was on the look-out for him, he retired to Bruges[3].

Lancastrian Plots.

Early in the following year the air was full of rumours of intended invasions of England in the Lancastrian interest[4]. It was in connexion with these plots that the Earl of Oxford and his son lost their heads in Feb. 1462. This must have disconcerted the arrangements. In March, Somerset and Hungerford returned to Scotland instead of invading England[5]; the idea of an invasion was not however given up, and a fleet of French, Breton, and Spanish ships was assembling in the Seine[6].

The Lancastrians in Scotland.

On their arrival in Scotland the royal fugitives had been received first in the palace of Linlithgow; thence they proceeded to Edinburgh, where they were lodged in the convent of the Dominican Friars. They seem to have been in great poverty. We find Margaret borrowing money of the Queen Dowager of Scotland, and pledging to her a gold cup[7]; while from a subsequent letter of

[1] Paston Letters, ii. 45–7.

[2] Ib. 52.

[3] Chastellain, u. s., pp. 66–9; Monstrelet, u. s., f. 91 a.

[4] In Feb. 1462 secret intelligence had been received in Norfolk of an intended threefold invasion of England; Paston Letters, ii. 91. I am inclined to think that this is the same conspiracy as the one mentioned in Three Fifteenth Cent. Chron. p. 158; but the chronology there is very confused; cf. ib. 175; and the account has been grossly exaggerated either by Yorkist fears or Lancastrian hopes. Nine powers are represented as engaged in the scheme, and the continental forces to be employed amount to over 300,000 men. Fortescue is expressly named as one of the party which was to land at Sandwich. Somerset was to be accompanied by Henry (read *John*) of Calabria, Margaret's brother, which is not improbable.

[5] Paston Letters, ii. 93; Will. Worcester, p. 779.

[6] Paston Letters, ii. 93–4.

[7] Burnett, Exchequer Rolls of Scotland, VII. xxxvi f., and the references there given. Chastellain

Henry VI it would seem as if Fortescue himself had ministered to the necessities of his master at his own expense[1]. Later in the year 1461 Henry seems to have gone to Kirkcudbright, leaving Margaret and her son with Fortescue and others at Edinburgh[2]; while early in 1462 the prince paid a visit to the Queen Dowager at Falkland[3].

Margaret goes to the Continent.

In April, Margaret with her son and others set out for the Continent, in order to plead her cause in person. She embarked at Kirkcudbright, and landed in Brittany, where she was well received by the Duke, who gave her 12,000 crowns[4]. Thence she went to her father René in Anjou, and from him to the court of Louis at Chinon[5]. Here a treaty was negotiated between Louis and Margaret, which was signed at Tours, June 28th, 1462[6]. In July Louis and Margaret seem to have had another meeting at Rouen[7]. By this time Margaret had got together a considerable force, intending to return to Scotland and invade England from thence.

Treaty with Louis XI.

Affairs in Scotland.

But meanwhile things were going badly there. A party among the Scotch lords, strongly opposed to the Lancastrian policy of Bishop Kennedy of St. Andrew's,

makes Margaret say: 'Donc . . . me suis fuie en Escoche, là où vivant d'emprunt et reçue soubs promesse de secours, portant mainte estroite povreté honteuse, Escochois en fin m'ont laidement déçue,' &c.; vii. 103; cf. ib. iv. 297.

[1] 'À ses despens nous a toujours entretenu notre estat.' In Waurin, éd. Dupont, iii. 169 f. Printed imperfectly and with a different date in Family History, p. 78.

[2] Paston Letters, ii. 46. I do not know why Mr. Burnett (u. s.) should doubt this.

[3] Exch. Rolls, u. s. p. 85.

[4] Vid. Commynes, éd. Lenglet-Dufresnoy, ii. 372.

[5] Will. Worcester, pp. 779 f.; cf. Chastellain, vii. 105.

[6] See Commynes, u. s., ii. 367–373. Margaret's commission is dated Edinburgh, April 10. Whether Fortescue went to France with Margaret, or remained in Scotland with Henry, I have not been able to determine with certainty. If Mdlle. Dupont is correct in assigning Henry's letter of credence for Fortescue to Louis XI, cited above, to the year 1462, the question would be settled in favour of the former view. But it is against this that his name does not occur among the negotiators or signataries of the treaty with Louis XI, though less important men are mentioned. For other schemes of Margaret at this time, see an interesting paper in Dupont's Waurin, iii. 178–181. It is there said that many in Wales and in the South and West of England were ready to rise in Henry's favour.

[7] Commynes, u. s., ii. 12.

which they said was ruining the country to please the king of France, entered into negotiations with Edward IV. A marriage was even talked of between him and the widowed Queen of Scots. It was said that Henry and his adherents were to be given up. In fear of this Henry withdrew with Bishop Kennedy, first to St. Andrew's, and then to another of his places on the sea, whence he ultimately sailed to join Margaret in Northumberland[1].

Loss of the Northern castles.

The negotiations between England and Scotland led however to no great result[2]. Another blow which befell the Lancastrians at this time was the loss of Alnwick and the other Northern castles, which they had hitherto held[3]. Margaret however continued her preparations. A fleet of French, Spanish, and Breton ships, the same probably which had begun to assemble in the Seine in March, took the Channel in September. Margaret was at Boulogne, perhaps awaiting the issue of a naval battle, and hoping to be admitted into Calais, where the soldiers were on the verge of mutiny for want of pay. The alarm in England was considerable; all men between the ages of sixteen and sixty were ordered to be ready to follow the king at a moment's notice. But fortune again declared for Edward. The foreign fleet was defeated with great loss by Warwick, and Calais did not open its gates to Margaret[4]. Had it done so, it would very likely have shared the fate of Berwick, for the 20,000 livres which Margaret had borrowed of Louis XI were to be repaid within a year of the recovery of Calais, or in default Calais was to be ceded to France[5]. In October Margaret set out from France with her French

Expected invasion of England.

[1] On all this compare Paston Letters, ii. 110–1, with the interesting remonstrance addressed by Bp. Kennedy to Louis XI, in which he enumerates all that he had done for the Lancastrian cause; Waurin, u. s., iii. 164–175; also William Worcester, p. 779; Cont. Croyl. p. 551. According to Edward IV, Margaret had promised Kennedy the see of Canterbury; Halliwell's Letters, i. 123–4.

[2] Exchequer Rolls, VII. xli f. Their failure was mainly due to Kennedy; Waurin, iii. 167, 172.

[3] W. Worcester, u. s.

[4] On all this see Paston Letters, ii. 112–3, 117–9.

[5] Printed in Waurin, iii. 176–7. The date is Chinon, June 23, 1462. According to Chastellain, iv. 226, Louis had thoughts of besieging Calais on his own account.

troops under the command of Pierre de Brézé, and recovered Alnwick, Bamburgh, and the other Northern castles. Here she seems to have been joined by Henry[1], but on the approach of Warwick and Edward in November they retired to Scotland with De Brézé, leaving Somerset in Bamburgh and Hungerford in Alnwick[2]. On December 10th siege was laid to the castles in regular form[3]. On Christmas Eve Bamburgh and Dunstanburgh surrendered, and Somerset and Sir Ralph Percy submitted to Edward[4]. Alnwick fell on Jan. 6th, 1463. A relieving force under De Brézé did not venture to do more than bring off the garrison, though more than one contemporary is of opinion that with a little boldness a decisive blow might have been struck[5]. Northern castles recovered. Lost again.

Early however in 1463 Bamburgh and two other castles were recovered by the Lancastrians with a mixed French and Scottish force. And in May Sir Ralph Grey, who had been jealous that the custody of Alnwick had been committed by Edward IV to Sir John Ashley and not to himself, expelled the latter from the castle, and with it went over to the Lancastrian side. Ashley was captured by Sir Ralph Percy, who returned to the allegiance of Henry VI about the same time[6]. Newcastle might have Recovered.

[1] See above, p. 60.

[2] W. Worcester, p. 780. Warwick set out for the North Oct. 30th; Paston Letters, ii. 120: Edward four days later; Worcester, u. s.; cf. Three Chron. pp. 156, 176.

[3] On the siege of these castles, see Excerpta Hist. p. 365; Paston Letters, ii. 120–3; Three Chron. pp. 158–9.

[4] Worcester, pp. 780–1; Gregory, pp. xxvii, 219. Somerset's pardon is dated March 10, 1463; Rot. Pat. 3 Edw. IV, memb. 18. As early as Sept. 1462 Somerset was said to be corresponding with Warwick with reference to a change of sides; Paston Letters, ii. 112–3.

[5] Worcester, u. s.; Warkworth, p. 2; Three Chronicles, p. 176. Hardyng, on the other hand, thinks that they acted wisely to attempt no more; pp. 407–8. These are the last events narrated by him. He strongly urges Edward to come to terms with the exiled Lancastrians, by granting Henry VI the Duchy of Lancaster. If they pass into France they will cause endless mischief; a prognostication which was amply verified; pp. 410–2. According to Chastellain, iv. 220–1, Louis XI did try to mediate an arrangement between the rival kings.

[6] W. Worcester, pp. 781–2; Three Chron. p. 176. The latter Chronicle places the recovery of Bamburgh before the meeting of Parliament, April 29th, 1463; the date of the defection of Grey is

shared the fate of Alnwick but for the promptness with which Warwick sent his brother Montague to defend it. In June, Henry, Margaret, and De Brézé were together in Bamburgh[1]. But in that very month Warwick himself was again sent to the North[2]; the Lancastrians dispersed once more, and Margaret retired to Scotland, closely pursued by Warwick[3]. About Christmas Somerset returned to his allegiance[4]. Early in 1464 the castles of Norham and Skipton in Craven were captured by the Lancastrians[5], and a rising took place in Lancashire and Cheshire, always a stronghold of the party[6]. But all their hopes were overthrown by the crushing defeats inflicted on them by Warwick's brother Montague in the battles of Hedgeley Moor, April 25th, and Hexham, May 8th, 1464[7]. Somerset, Hungerford, and other prominent Lancastrians were taken and beheaded. Henry, who seems to have been awaiting the issue of the field in Bywell Castle, escaped thence, no one knew how or whither, but ultimately to Scotland[8]. In June Alnwick and Dunstanburgh surrendered to Warwick, and Bamburgh was taken by assault[9].

Lancastrian successes.

Fatal overthrow.

fixed by a letter printed in Dupont's Waurin, iii. 159–161, which shows that the news of it reached London on May 31, 1463. Dr. Stubbs (C. H. iii. 199) places the recovery of the castles in 1464; but though Worcester *seems* to place the recovery of Alnwick immediately before the battle of Hexham, a whole leaf of the MS. is missing between the two occurrences. The letter cited above is quite conclusive.

[1] On all this see Waurin, u. s.

[2] 'After Pentecost,' says Three Chron. pp. 176–7. Whit-Sunday in 1463 was on May 29th. In Rymer, xi. 501, there is a commission, dated June 2, to Warwick and others to array the men of Westmoreland against the king's foreign enemies who have been stirred up by Henry, late king *de facto*. A letter written on Saturday, July 15th, 1463 (? 16th, July 15th in 1463 was on a Friday), says that Warwick was in great force at Newcastle, and intending to go forwards to Scotland; that De Brézé, Grey, and others had been besieging a castle near Alnwick, but had retired on the approach of Montague; that Edward had left London on the previous Thursday week (July 7th), intending to follow Warwick in force; Waurin, u. s., iii. 162–4.

[3] Waurin, ii. 319–321. This therefore would be in July; see last note.

[4] Gregory, p. 223; Three Chron. p. 177. Warkworth (p. 3) places Somerset's return 'half a year' after his original defection.

[5] Three Chron. p. 178.

[6] Paston Letters, ii. 152.

[7] Cf. Rot. Parl. v. 511 f.

[8] Three Chron. p. 179. Many thought that he was dead; Chastellain, v. 22.

[9] Three Chron. p. 179; Worcester, pp. 782–3; notes to Warkworth, pp. 36–9.

But almost a year before the final blow fell, Margaret and her son, with De Brézé, Fortescue, and others in her train, had quitted Britain for the Continent. It must have been just after the dispersal of the Lancastrians in the summer of 1463 that they set forth [1], for it was in the last days of July that they landed at Sluys. They were in extreme poverty, and dependent on the liberality of De Brézé for the very bread they ate [2]. From Sluys Margaret despatched a messenger to the Duke of Burgundy, who was superintending the negotiations which were going on at St. Omer between the French and English, to beg for a personal interview with him. From this the Duke tried to excuse himself, but ultimately, with the magnificent courtesy which characterized him, yielded to Margaret's importunity. On her way to join him she was met by Charles the Bold at Bruges, who lent her money to supply her wants. Here she left her son and all her household, Fortescue no doubt among them, and proceeded on her

Margaret and her son go to the Continent.

[1] The English authorities are very obscure as to the time of Margaret's departure for Flanders. It seems commonly assumed that it was a consequence of the defeats of Hedgeley and Hexham. But the brief Latin Chronicle (Three Chron. pp. 179 f.) clearly places it before those events, for after relating them it says: 'Margareta has procellas *precavens*, incola elegit fieri transmarina.' And it may well have been thought desirable to place the heir of Lancaster in safety before the die was cast. All the foreign authorities, Chastellain, Waurin, Monstrelet, Duclerq, place Margaret's arrival in Flanders in 1463, and so does Worcester (p. 781), though the month he gives, April, is too early. Dr. Stubbs, citing Worcester, represents Margaret as going abroad early in 1463 and returning towards the end of that year. But Worcester clearly refers to the final departure of Margaret, for he speaks of her settling in her father's dominions, 'ut ibi expectaret eventus mundi.' Worcester moreover makes her embark at Bamburgh. We have seen that Henry, Margaret, and De Brézé were there in June 1463, but the foreign authorities, especially Waurin, ii. 319 ff., clearly represent them as retiring to Scotland, where their presence seems to have been no longer welcome; cf. Basin, ii. 50; Chastellain, iv. 279; vii. 103. It would seem that it is to this period that we must refer the romantic story of Margaret's adventure with the robber, which she told the Duchess of Bourbon at St. Pol; see below, p. 64. From this point to the arrival of Margaret at St. Mighel in Barrois, I follow almost exclusively the authority of Chastellain, whose narrative is most minute, and whose position enabled him to obtain the most exact information. Compare also Monstrelet, iii. f. 96 a; Duclerq, Liv. v. ch. 1; Basin, ii. 50. Gregory, pp. 220–1, is very confused.

[2] Chastellain, iv. 279.

Interview with Philip of Burgundy.

way alone. At Béthune the English made an attempt to capture her; but they were too late, and on August 31st she reached St. Pol in safety, where she was to await the Duke, who arrived the following day, and entertained her magnificently and gave her many comfortable words[1]. The next day, September 2nd, the Duke departed, leaving his guest to the care of his sister the Duchess of Bourbon, whom Margaret entertained with the recital of her adventures. After his departure the Duke sent back a knight with a present of 2,000 gold crowns and a rich diamond for Margaret, and other presents for her attendants[2]. The following morning, September 3rd, Margaret departed from St. Pol and returned to Bruges, escorted by a body-guard of the Duke's archers, to prevent her falling into the hands of the English. At Bruges she found not only Charles the Bold, but also the Bastard of Burgundy and Philip de Crèvecœur and others. And in the entertainments that followed there was much stately conflict on points of etiquette, Charles insisting with somewhat ostentatious chivalry on treating his guests in accordance with their former rank, and not according to their present condition[3].

The Lancastrian exiles retire to St. Mighel.

From Bruges Margaret and her followers were conveyed under Burgundian protection to the borders of Bar, where they were received by an escort sent by Margaret's father[4], who assigned them as their residence the little town of St. Mighel in Barrois. Here they lived the usual life of exiles, in great poverty[5], carrying on a feeble agitation at such foreign courts as they had access to, but sometimes in such straits for money that they could hardly pay a messenger to go on their errands[6]. Louis XI was constantly applied to. In 1464[7], and again in the summer of

Negotiations.

[1] Chastellain, iv. 280–6, 293–4.

[2] Ib. 298–9, 307; cf. Commynes, éd. Lenglet-Dufresnoy, ii. 178.

[3] Chastellain, iv. 309–314.

[4] Ib. 332; vii. 105.

[5] 'We buthe alle in grete poverte, but yet the quene susteynethe us in mete and drinke, so as we buthe not in extreme necessite. Here highnesse may do no more to us thanne she dothe;' Fortescue to the Earl of Ormond. Family History, p. 72.

[6] 'The berer hereof had of us but iij scutes for alle his costes towardes you, by cause we hadde no more money;' ib.

[7] In the same letter Fortescue speaks of having been at Paris;

1465, Fortescue himself went to Paris. On the latter occasion he was accompanied by the Earl of Pembroke, Henry VI's half-brother, and was the bearer of a letter from Henry VI to Louis XI, dated Edinburgh, March 28th (? 1465)[1]. Their chief hope however was in the kings of Portugal and Castile and in Charles the Bold, because of their connexion with the house of Lancaster. It was hoped that the first-named king would influence the Emperor Frederick III who had married his sister, and that the Emperor would bring pressure to bear on the Pope[2]. The (titular) Earl of Ormonde, who had fled to Portugal after Towton, was now acting as Lancastrian ambassador at that court. It is from a letter of Fortescue to him, enclosing instructions from the Queen and letters from the Prince, that we learn most of the particulars given above[3]. This letter was written in December 1464. In the instructions it is stated that Henry is well and out of the hands of his rebels, and we have seen that in the following March he perhaps dated a letter from Edinburgh. But soon after this he must have left Scotland, which in the previous year had concluded a truce for fifteen years with Edward; and early in July[4], while wandering in Lancashire among his secret friends, he was betrayed and

Fate of Henry VI.

ib. 71. In the *De Laudibus*, c. 53, Fortescue alludes to a recent sojourn in Paris, but whether it was this or a later one cannot be determined.

[1] Printed by Lord Clermont, u. s. p. 78. More correctly by Dupont, u. s. iii. 169 f., who however assigns it to the year 1462, v. s. p. 59, *notes*. Henry's movements at this time are wrapped in mystery. We have seen (p. 62) that in July 1463 he retired to Scotland, where Margaret left him. Monstrelet and Ducleroq (u. s.) represent him as being in a strong place, 'ou pays de Galles' (? Galloway), during her visit to Flanders. Chastellain, iv. 279, merely says that she left him in a secure place. In Jan. 1464 he seems to have been at Edinburgh; Exch. Rolls, VII. xxxvii; Maitland's History of Edinburgh, p. 8. In March 1464 he was certainly at Bamburgh; Waurin, iii. 183. After Hexham he probably returned to Scotland, and if we may accept Lord Clermont's date for this letter he was at Edinburgh in March 1465.

[2] Instructions to Ormond, u. s. p. 74.

[3] These documents are given by Lord Clermont, u. s. pp. 69–75, but he is mistaken in thinking that none of them have been printed before. The letters of Prince Edward and of Fortescue are in the Archæological Journal, vii. 170; cf. Foss, Judges, iv. 313.

[4] The date given by most authorities is '*about* the feast of SS. Peter and Paul,' i. e. June 29.

captured, and committed to the Tower, where he remained until his brief restoration. He does not seem to have been harshly treated, and full provision was made for the satisfaction of his religious wants[1]. His life was valuable to Edward as long as his son remained at large. Of all the princely relatives of the house of Lancaster Charles the Bold seems to have been the one who took the most interest in its fate[2]. And about this very time Edward found it impossible to come to a permanent agreement with Burgundy because of Charles's influence in favour of Margaret[3]. It is not therefore surprising that in this summer Louis XI and Edward IV made a truce for eighteen months, of which the terms were that Louis was not to assist Margaret, and Edward was not to assist Burgundy or Brittany[4]. For this year was the year of the War of the Public Weal in France, in which not only Brittany, but also John of Calabria the brother of Margaret of Anjou, and Edmund Beaufort the titular Duke of Somerset[5], were among the confederates of Charles of Burgundy. And this may have had something to do with Charles's tenderness for the concerns of Margaret. These facts moreover lend an additional interest to Fortescue's reference to that war in the ninth Chapter of the present work, where, speaking of the perils of over-mighty subjects, he says: 'and in owre dayes we have sene a subgett off the Ffrench kynges in such myght þat he hath gyven bataill to the same kyng and putt hym to flight, and aftirward besegett hym beyng in Paris is grettest cete, and so keppid thair vnto þe tyme his said kyng hade made such ende with hym, his adherentes and fauctours as he desired.' But at the time no doubt the humiliation of Louis was a matter of jubilation in the Lancastrian camp. In June 1467 Charles the Bold became, by his father's death, Duke

Relations with Burgundy and France.

War of the Public Weal.

[1] Issues of the Exchequer, pp. 489 f.

[2] That Charles really felt his connexion with the house of Lancaster is shown by the excuses which Chastellain (v. 22) thinks it necessary to make for his intermarrying with the house of York.

[3] W. Worcester, p. 784.

[4] Ib. 785; Rymer, xi. 452 ff.

[5] Hearne's Fragment, p. 295.

of Burgundy; and in the following year he married Margaret the sister of Edward IV[1]. The Duke of Somerset was at the Burgundian court while the preparations for the marriage were going forward, and only left Bruges the day before the arrival of the bride, and having nothing more to hope for in that quarter retired to Queen Margaret[2]. This change in Charles's attitude must have seemed at the time a great blow to the Lancastrians, but it had its compensations. The close alliance of England and Burgundy led Louis XI to look with greater favour on the cause of the exiles, and it occasioned the final breach between Edward and the Nevilles[3]. Even before this time the hopes of the Lancastrians had been raised by the attitude of Warwick[4] and the general discontent with Edward's government. And now in the summer of 1468 Jasper Tudor was sent into Wales, where he exercised jurisdiction in King Henry's name[5]. A little later, Margaret, having been allowed to collect some forces in France, was waiting at Harfleur hoping for an opportunity of passing into England[6]. But the threat of invasion came to nothing, and Jasper Tudor was defeated by Lord Herbert, to whom his title of Earl of Pembroke was given. We do not know with what

Alliance of Charles the Bold with Edward IV.

Louis XI begins to favour the Lancastrians.

[1] As early as May, 1467, the question of this marriage had formed the subject of wagers in England; Paston Letters, ii. 305.

[2] Paston Letters, ii. 319. He seems however to have entered into communication with some of the English who came over for the wedding. Two gentlemen of the retinue of the Duchess of Norfolk were executed for this; Hearne's Fragment, p. 297; Plumpton Correspondence, pp. 19-20; Gregory, p. 237.

[3] Cont. Croyl. p. 551.

[4] S. C. H. iii. 205. In Dupont's Waurin, iii. 186-196, there is a most interesting document dated Jan. 16, 1467 (O. S.), which throws great light on the attitude of Louis and Warwick at this time. It is from Louis's ambassador in England, who says, the report that Louis is about to marry one of his daughters to Prince Edward of Lancaster has caused the utmost dismay in England. On Jan. 7th Edward sent for Warwick, who refused to come unless his mortal enemies Herbert, Scales, and Wydville [Rivers] were removed. In Suffolk 300 men had risen and chosen a captain, 'Robin,' but on their sending to Warwick he told them that it was not yet time to move ('besoigner'). Warwick is loyal to Louis, and though timid cannot dissemble much longer. He is going northwards to meet his brother Northumberland, and if the king pursues him he will defend himself.

[5] Gregory, p. 237; Worcester, p. 791.

[6] Ib. 792.

feelings the exiles received the news that in August 1469 Edward was a prisoner in the hands of the Nevilles, and that the King-maker had thus two captive kings in his custody. But if they augured from it a speedy restoration of Henry VI, they were destined to be disappointed for a while. Warwick was not yet prepared for a Lancastrian restoration, and Edward was allowed to go free. It was not till after the expulsion of Warwick and Clarence from England in March 1470 that the alliance between Margaret and the former was brought about by Louis XI[1].

Alliance between Margaret and Warwick.

Louis's policy in the matter was very simple. As long as England did not interfere with his plans, it was a matter of great indifference to him who was king there. If Warwick had succeeded in carrying Edward with him in his policy of friendship with France, he would have been quite content. That having failed, he was resolved to use Warwick as an instrument to overturn Edward[2]. The negotiations between Margaret and Warwick took place at Angers under the personal superintendence of Louis, and lasted from the 15th of July till the 4th of August, 1470[3]. It was with the utmost difficulty that Margaret was brought to consent to the unnatural alliance[4]. Fortescue, on the other hand, seems to have thrown himself into the new combination with ardour. He plied Louis XI with memorandums and state-papers[5], on the claims of Edward IV to the crowns of England and France, on the impossibility of peace with Edward, on the certainty of

Fortescue's zeal for the alliance.

[1] Louis sent to summon Margaret in May 1470; Commynes, ed. Lenglet-Dufresnoy, iii. 124; cf. Basin, ii. 223.

[2] Kirk, Charles the Bold, i. 419.

[3] An agreement had however been practically come to by July 25. See Louis's letter of that date in Duclos, iii. 294. The treaty in which Louis's brother the Duke of Guienne promised to espouse the Lancastrian cause, dated July 30th, speaks of the marriage of Prince Edward and Warwick's daughter as already arranged; MS. Cotton. Vesp. F. iii. f. 32; cf. 'The maner and guyding of Quene Margaret and the Earle of Warrewick,' in Ellis's Letters, II. i. 132–5, or White Rose, pp. 229 ff.

[4] Chastellain, v. 467–8; Basin, ii. 223.

[5] None of these documents have been as yet discovered, but a paper containing an abstract of them is printed by Lord Clermont, u. s. pp. 80–2. The original is in the National Library at Paris.

peace with Henry; on the threats of invasion uttered in the last English Parliament, and the means of stirring up troubles in England which would oblige Edward to remain at home until he should be unseated altogether. Finally, with more particular reference to the meeting at Angers, he submitted a memorandum embodying the following points: the desirability of the marriage between Prince Edward of Lancaster and the daughter of the Earl of Warwick, and of entrusting the government of England to the Earl; the means of reconciling Edward to the revolution, the establishment of the Staple of English wools in France at Calais[1] or Rouen, the extension of English trading privileges in Guienne, and the means of providing for the necessary expenses. Events moved rapidly after the conclusion of the agreement[2]. In the middle of September Warwick landed in England[3], on the 3rd of October Edward fled to Flanders, on the 5th Henry VI was taken from the Tower[4], and the machinery of government went on once more in his name, the real power being in the hands of Warwick, who styled himself his lieutenant[5]. Archbishop Neville, Warwick's brother, was made Chancellor, no regard being paid to Fortescue's claims to that office[6]. Parliament

Lancastrian restoration.

[1] Does this mean that Calais was to be given up to Louis? If not, it is difficult to see why any new agreement was necessary. The Staple of English Wools had long been at Calais. We have seen (p. 60) that Margaret had once before signed an agreement which came perilously near to an agreement to give up Calais. It is not uncommon for exiles to think that the first duty which they owe their country is their own restoration. Warwick however was not likely to consent to the surrender of this stronghold of his own power. It is also somewhat strange that Fortescue, who in the present work insists so strongly on the necessity of reducing the power of the nobles, should have been willing to surrender the government to Warwick.

[2] For this summary of events see S. C. H. iii. 204 ff.

[3] He had been expected earlier; Paston Letters, ii. 406.

[4] Warwick's letter announcing this to Louis, dated October 8th, is in Waurin, iii. 43–4.

[5] Arrival of Edward IV, p. 1. The editor (Mr. Bruce) has questioned this on the authority of Polydore Vergil. But Warwick so styles himself in a document preserved in MS. Yelverton, No. 35, f. 127, r°, and copied by Stowe, MS. Harl. 543, f. 171, v°: 'Richard Erle of Warwike and Salisbury ... lievetenaunt to ... Kynge Henry the sext.'

[6] A lay Chancellor was however still at this time a rare exception.

met in November; it settled the crown on Henry and his son with remainder to Clarence[1], and reversed the Lancastrian attainders, thus enabling the Dukes of Somerset and Exeter, and the Earls of Pembroke and Richmond, to return to England early in 1471. Meanwhile Margaret and her son, with Fortescue and others in their train, were still detained in France[2]. Mr. Kirk has suggested that the delay was due to Louis, who wished to give his especial ally Warwick time to establish himself firmly before allowing the genuine Lancastrians to depart[3]. If this was his object, his astuteness, not for the first time, over-reached itself. The delay was fatal. It must have been during this interval that Fortescue drew up the state-paper now printed for the first time[4], and entitled 'Articles sent from the Prince to the Earl of Warwick his father-in-law.' That it is by Fortescue cannot be doubted by any one who compares it with the present work, its precise relation to which will be discussed later[5]. In it he advised that all claims for reward and compensation should be reserved for the consideration of the Council, and that the King should forbear for the first year to keep the usual royal household. The other points are all embodied in the present work and are discussed in the notes. Whether the paper had any influence on Warwick's policy cannot be determined. At length, on Easter-Day, April 14th, Margaret with her son and Fortescue[6] landed at Weymouth, only to learn on the morrow that on the very day of their landing Warwick had been overthrown and slain by Edward at Barnet, and that Henry was once more a prisoner. To Fortescue, who had done so much to bring about the alliance

Margaret detained in France.

Scheme of reform drawn up by Fortescue.

Landing of Margaret.

[1] This can hardly have been, as Lord Clermont suggests (u. s. p. 80), Fortescue's means for reconciling Edward IV to the revolution. To him the succession of Clarence would have been a very poor consolation.

[2] In November–December 1470 they seem to have been with Louis at Amboise; Waurin, iii. 41–6. Thence they went to Paris; Commynes, u. s. ii. 88. In February Henry sent to fetch his wife and son, but in vain; Rymer, xi. 693.

[3] Charles the Bold, ii. 85.

[4] Below, Appendix B.

[5] Below, pp. 89, 95.

[6] They were proclaimed traitors April 27th; Rymer, xi. 709.

with Warwick, the blow must have been particularly severe. Somerset however, and others who joined them at Cerne Abbas after their arrival, maintained that the removal of Warwick was a source of strength rather than of weakness to their party[1]. It was resolved to persevere, and if they had been able to carry out their plan and gain the strongholds of their party in the North, the issue might yet have been doubtful. But the rapidity of Edward's movements made this impossible, and at Tewkesbury, on the 4th of May, the Lancastrian cause was finally overthrown. Prince Edward, the hope of the house, was slain. Margaret, now childless and soon to be a widow, was reserved to grace the conqueror's triumph[2]. She remained a prisoner till 1475[3], when she was ransomed, and she died in 1482, too soon to see the downfall of the house against which she had striven so long. Within three weeks of the battle of Tewkesbury perished Henry VI. His life was no longer valuable, and he died. His virtues and his misfortunes had deeply touched the heart of England, and his death gave them the final consecration. Much as England had suffered under him, she held him guiltless[4], and the voice of the people decreed to him a canonization more real than any which Popes or Churches have it in their power to bestow[5]. Fortescue was among the prisoners of Tewkesbury, and his life was spared[6]. Now that his cause was expired and his master

Battle of Tewkesbury.

Death of Henry VI.

Fate of Fortescue.

[1] 'For that los, theyr partye was nevar the febler, but rather strongar.' Arrival of Edward IV, p. 23.

[2] 'Servata incolumis, ut ante Regem triumphantem curru veheretur Londonias; quod et factum est;' Cont. Croyl. p. 555. On Dec. 16, 1470, she had also lost her brother, John of Calabria.

[3] The articles for her delivery, signed 'Loys,' are in MS. Cott. Vesp. F. iii. f. 30.

[4] 'And alle bycause of his fals lordes and nevere of hym;' Warkworth, p. 12. 'The kyng knoweth not alle;' Political Songs, ii. 230. It must be confessed however that foreigners speak with much less reserve of Henry's incapacity as a ruler; cf. e. g. Chastellain and Waurin.

[5] 'Unde et agens tyranni, patiensque gloriosi martyris titulum mereatur,' says the Yorkist Croyland Continuator, p. 566; cf. the hymn to Henry in Warkworth, p. xxi.

[6] In Paston Letters, iii. 9, Fortescue (under the name of 'Lord Foskew') is mentioned among those beheaded after Tewkesbury, though a note is added to say that he and Sir William Grymesby were still alive. The latter was executed; Warkworth, p. 18. It

dead[1], Fortescue cannot be blamed for accepting the clemency of the conqueror. There was in fact nothing left to fight for. In October, 1471, his pardon passed the Great Seal, and soon after he was made one 'of the King's Councell[2].' But before obtaining the reversal of his attainder and the restoration of his estates, he was required to write in favour of the king's title, and refute the arguments which he had formerly brought against it[3]. How he executed this task will be told later[4]. In October, 1473, he petitioned the king in Parliament for his restoration on the ground that this had been done. His petition was granted[5]. An exemplification of this petition and the answer to it passed the Great Seal in February, 1475. The restoration of his estates was no doubt facilitated by the fact that the bulk of them had been granted to Lord Wenlok, who joined Warwick against Edward, and fell at the battle of Tewkesbury[6]. Fortescue resided at Ebrington after his restoration to his estates, and is buried in the church of that parish. The last notice of him which has been discovered belongs to February, 1476, when he delivered into the Exchequer an Assize which had been taken before him when he was Chief Justice[7]. He is said to have lived to the age of ninety, but even if this tradition could be relied on, the uncertainty which as we have

Required to write in favour of the Yorkist title.

Date of his death unknown.

would seem therefore that Fortescue's execution was considered a certainty at the time. Fortescue is called 'Lorde Foschewe' also by Gregory, p. 217.

[1] These are Fortescue's own expressions in the 'Declaration on certain Writings,' Works, p. 532.

[2] Ib. 533.

[3] There is no evidence for the story told by Lord Campbell and repeated by Lord Clermont that the imposition of this condition was due to Fortescue's successor Chief Justice Billing. See Foss, Judges, iv. 417–8. That Fortescue should under the circumstances have complied with this condition merits no particular blame. But we certainly cannot make it a matter of special praise as Coke does. (Cited, Family Hist. p. 49.) Fortescue himself evidently thought it savoured of 'doubleness' and required an apology; Works, p. 532.

[4] Below, pp. 78–9.

[5] Rot. Parl. vi. 69 a.

[6] As early as 1468 Wenlok was charged with corresponding with Margaret; W. Worcester, p. 790; cf. Waurin, iii. 189 f. For the grant of Fortescue's lands to Wenlok, see above, p. 43, *note*; cf. Rot. Parl. v. 581 b. Between the grant to Wenlok and Fortescue's restoration the reversion of Ebrington must have fallen in; v. s. p. 43.

[7] Kal. Exch. iii. 8, in Foss, u. s. p. 314.

seen hangs over the date of his birth[1] would make it valueless for the determination of the date of his death. But on any computation his days must have exceeded the allotted threescore years and ten. Of his wife I have found only one notice after 1447, and from this it appears that she was alive in September, 1455, and died before May, 1472[2]; nor have I discovered whether she or any of his family accompanied him in his wanderings. He had one son and two daughters, all of whom had married before the time of their father's exile[3]. His only son Martin however died before him, Nov. 11th, 1471[4], at a time when political disappointments must have rendered this heavy private bereavement additionally hard to bear. In favour of this son Fortescue had in 34 Henry VI, by means of a fine levied in the Court of Common Pleas, divested himself of the estates in Devonshire, which as we have seen he had himself received from his brother Henry[5]. Martin Fortescue left two sons, of whom the elder bore his grandsire's name of John, while the younger was named William. From the former is descended the present Earl Fortescue, the latter is the ancestor of Lord Clermont and his brother Lord Carlingford. To the elder line belonged Lord Fortescue of Credan, who acted as judge in all three Courts of Common Law, and was the first editor of the present work; to the younger line belonged William Fortescue, the friend of Pope, who after sitting in the Exchequer and Common Pleas, became ultimately Master of the Rolls[6]. So that in Fortescue's case his own remark has been amply verified, that from the families of judges often descend nobles and great men of the realm[7].

His wife and family.

His descendants.

[1] Above, pp. 40–1.

[2] This is the inquisition taken after the death of her son Martin: from which it appears that she was alive in 34 Hen. VI, but dead on May 12th, 12 Edw. IV. Printed by Lord Clermont, Family History, pp. 144–6.

[3] Ib. 53–4.

[4] Not Nov. 12th, 1472, as Lord Clermont says; ib. 94, 127–8. See the document cited in the last note but one.

[5] Above, p. 43.

[6] See Lord Clermont's Family History, and the pedigrees there given.

[7] De Laudibus, c. 51.

PART III.

WRITINGS, OPINIONS, AND CHARACTER OF SIR JOHN FORTESCUE.

Fortescue as a writer.

WE must now turn from Fortescue the lawyer, the judge, the ardent and faithful adherent of the Lancastrian cause, to Fortescue the publicist and writer. But the political and the literary activity of Fortescue are closely connected. It was in the service of the house of Lancaster that he first wielded both sword and pen. His writings may be divided according to their subject into three classes:—1. Works on the dynastic question of the rival claims of the houses of Lancaster and York. 2. Constitutional Treatises. 3. Miscellaneous writings.

Divisions of his writings.

The first class comprises several short tracts on the Succession question, and the second book of the treatise *De Naturâ Legis Naturæ*. The second class comprises the first book of that treatise, the *De Laudibus Legum Angliæ*, and the present work. The third class comprises one genuine tract and some others of which the authenticity is, I think, extremely doubtful.

Tracts on the Succession.

The class which I have placed first is also in the main the first in order of composition. In it the first place belongs to the short tracts which Fortescue wrote in favour of the Lancastrian Title. Of these there have come down to us, either in whole or in part, the following:—

1. *De Titulo Edwardi Comitis Marchiæ*[1]. (Latin. Complete.)

2. Of the Title of the House of York[2]. (English. Fragmentary.)

3. *Defensio Juris Domus Lancastriæ*[3]. (Latin. Fragmentary.)

4. A Defence of the House of Lancaster: otherwise

[1] Works, pp. 63*–74*.

[2] Ib. 497–502. In Appendix D I have printed what I believe to be the beginning of this tract from MS. Cotton. Vesp. F. ix. f. 122. The tract is still however incomplete.

[3] Works, pp. 505–510.

called, A replication to the claim of the Duke of York[1]. (English. Complete.)

In the tract which he afterwards wrote to refute his own arguments, Fortescue says that there were many writings made in Scotland by other men which were fathered upon him without his consent and knowledge; others were drawn up by Henry's council, and passed by a majority of votes, though to some of them he himself was 'not well willing.' Others were his own composition[2]. Among the works which Fortescue denies to have been his was one embodying the absurd story, first set about at the time when John of Gaunt was thought to be aiming at the succession, that Edmund Crouchback was really the elder brother of Edward I[3]. It is to Fortescue's credit that he rejects this fable. But, on the other hand, he had no motive for accepting it. Any claim derived from Edmund Crouchback must have come through Blanche of Lancaster, the wife of John of Gaunt, and the whole of Fortescue's argument rests on the exclusion of all claims derived through females[4]. There is however no reason to doubt the authenticity of any of the four tracts enumerated above. They are consistent with one another, and with what we know from other sources to have been Fortescue's views, and the arguments which they contain are those which are refuted in his subsequent recantation. But the fact that they and also the second part of the *De Naturâ Legis Naturæ* have only

Other writings on the Succession question.

[1] Works, pp. 517–8, under the former title; below, Appendix C, under the latter. This tract seems clearly referred to in the 'Declaration,' &c., Works, p. 536.

[2] Ib. 523–4.

[3] Capgrave however accepted it. See Illustr. Henr., pp. xv, 107.

[4] That the idea of female succession was not wholly strange in England at this time is proved by the charges against Suffolk of intending to marry his son to Margaret Beaufort with a view to the succession to the crown; Rot. Parl. v. 177 b. Warkworth again (p. 4) says that there was an idea of marrying Edward IV's eldest daughter to the son of Warwick's brother Montague; 'whiche, by possibylite, shuld be kynge of Englonde.' Fortescue's views are however confirmed by an entry on the Close Roll of 13 Hen. III, memb. 15, dorso: 'non est consuetudo vel lex in terra nostra Angliæ, quod filia fratris alicujus primogeniti fratrem juniorem patri suo succedentem hæreditarie super hæreditate sua possit vel debeat impetere;' cited by Hardy, Preface to Close Rolls, p. xxxvi.

Other tracts of Fortescue probably lost.

come down to us for the most part in single copies[1], makes it extremely probable that Fortescue wrote other fugitive pieces on the same subject which have perished[2]. Under the repressive and inquisitorial system which Edward IV established after his restoration it was no doubt dangerous

[1] The only known copy of both parts of the *De Naturâ Legis Naturæ* is the Lambeth MS. 262. A copy of the first part, which does not trench upon the Succession question, is among the Laud MSS., No. 585. There was a copy of this work among the Worsley MSS. (see Catalogus Librorum Manuscriptorum, ii. 213 a), but whether this contained both parts or not I cannot say. Of the other tracts mentioned in the text, No. 1 exists only in the Yelverton MS., vol. 69. The fragments of No. 3 come from two sources, but both are derived from the one copy which perished in the Cottonian fire. Nos. 2 and 4 are partial exceptions to the rule. No. 2 was printed by Lord Clermont from MS. Cotton, Julius F. vi. There is another copy in MS. Lansdowne 205, f. 137. A preliminary note, dated 1581, states that it was copied from 'certayne leves of a booke .... found in a bookbynder's shoppe, wheras the said book ignorantly had been putt to profane uses.' This copy corresponds exactly with the Cottonian MS., so that either the latter contains the 'leves' in question, or both MSS. copied the same 'leves.' Of No. 4 I have found one complete copy among the Yelverton MSS., and there is an incomplete copy in the Phillips collection. Not having seen the latter I cannot say whether it is derived from the former. It is the one which Lord Clermont has printed. Stowe has made two transcripts of the Yelverton copy: Harl. 543, f. 163, and Harl. 545, f. 136. But all these have escaped Lord Clermont.

[2] We are not left wholly to conjecture on this point. In the *De Titulo Edwardi*, &c., Fortescue speaks of 'codicem illum originalem qui de hiis latius continet in vulgari scriptum;' Works, p. 63*. This might be the English tract on the Title of the House of York (No. 2, above), but I have given reasons lower down for thinking that that is later, not earlier, than the *De Titulo Edw.* Again, at the end of the latter Fortescue announces his intention of compiling another work on the subject, which was to embody certain documents; Works, pp. 73* f. This work also, if it was ever written, has not been found. Of the cause of this scarcity there can be no doubt, when we compare the numerous copies which exist of the one tract which Fortescue wrote in favour of the House of York. Besides the five MSS. enumerated by Lord Clermont (Works, p. 520), I have come across the following: two copies in the Yelverton MSS., vols. 21 and 86; a second copy (besides the one cited by Lord Clermont) in MS. Harleian, 1757; and MS. Digby, 198, which last is the most ancient of all, but is unfortunately incomplete. How much the insecurity of the time contributed to the destruction of papers &c. may be seen from the frequent requests made by correspondents that their letters may be destroyed as soon as read; cf. Rymer, ix. 680; Paston Letters, i. 229, 346, 396, 433; iii. 487; Bekynton, i. 268. Another symptom of the time is the number of anonymous letters; see Paston Letters, iii. 515.

to be found in possession of tracts which favoured the claims of the house of Lancaster. Of these four tracts the last is only a short piece intended to prove the illegitimacy of Philippa the reputed daughter of Lionel Duke of Clarence, through whom the line of York derived their claim, a point which is also discussed, though more briefly, in the first two pieces. The first three all cover much the same ground, and by tabulating their contents and comparing the refutation of them in the 'Declaration upon certain Writings' we could restore with an approach to certainty the missing parts of Nos. 2 and 3. These last are practically identical with one another, one being in Latin and the other in English. It is impossible to say whether the English or the Latin version was composed first. But there can be little doubt that No. 1 is the earliest of the group, both because the arguments there brought forward are much less elaborated than in the corresponding portions of the other tracts, and also because it contains inaccuracies which are corrected in the latter[1]. To the same class belongs, as I have said, the second part of the *De Naturâ Legis Naturæ*. The difference between it and the preceding tracts consists, not only in its greater length (it occupies seventy large quarto pages in Lord Clermont's edition), but in the fact that while they deal openly and avowedly with the concrete case of the English Succession as disputed between the houses of York and Lancaster, this is in form purely abstract. It is cast into the shape of an argument, conducted before Justice as judge, between

Character of the existing tracts.

The second part of the *De Naturâ Legis Naturæ*.

[1] Thus in the *De Titulo Edwardi*, c. 3, Fortescue makes Margaret, wife of Malcolm Canmore, the daughter of Edmund Ironside. In the *Defensio* he makes her rightly his granddaughter; Works, p. 506. Again, in the *De Titulo*, c. 13, Fortescue from Edmund Mortimer Earl of March passes immediately to Richard Duke of York, omitting all notice of the latter's father, Richard Earl of Cambridge, through whose marriage with Mortimer's sister Ann the claims of the Mortimers passed to the House of York. This omission (it is not a mistake) is supplied in the 'Title of the House of York,' Works, p. 500; and in the *Defensio*; ib. 509. The date of the *De Titulo* is approximately fixed by the mention of Louis XI as 'nuper unctus;' ib. 74*. Louis XI was crowned August 15, 1461.

three claimants of a kingdom, viz. the brother of the deceased monarch, who is described as 'King of the Assyrians and Monarch of the whole of Greater Asia[1],' his daughter, and the daughter's son. The grandson maintains that though a woman cannot reign she can transmit a claim to the kingdom, the brother denies that she can do either, the daughter affirms that she can do both. It is needless to say that the judgement is in favour of the late king's brother. The arguments are of great subtlety and of interminable length. Men were more patient of length and dulness in the Middle Ages than we are now; still one is inclined to pronounce that, considered as a political pamphlet, the work lacks the primary condition of success, namely readableness. All these works were written in Scotland during the time of the author's exile there, that is between April 1461 and July 1463. Lastly, to this class must be assigned the tract which Fortescue wrote to refute the foregoing works, in order to obtain the reversal of his attainder. It must therefore have been written between October 1471 and October 1473, and is consequently, with the possible exception of a portion of the *Monarchia*, the latest of Fortescue's works; and we may therefore say, without very much risk of serious error, that his literary activity begins and ends with the question of the Succession. This piece is entitled 'The Declaracion made by John Fortescu, knyght, upon certayn Wrytinges sent oute of Scotteland, ayenst the Kinges Title to the Roialme of England[2].' In it he refutes many of the historical arguments which he had used in his previous writings, by saying with sufficient plausibility that since his return to England he has had the opportunity of informing himself better by consulting documents and chronicles to which he had no access in exile. But his ingenuity is chiefly displayed in getting over the force of the text, 'Eris sub potestate viri, et ipse dominabitur tui[3],' on which he had based so much of his argument against female succession. This, he now says, does not mean that

The 'Declaration upon certain Writings.'

Fortescue's change of front on the Succession question.

[1] Works, p. 116. [2] Ib. 523–541.
[3] Genesis iii. 16.

a woman must be under the power of every man, but only that she must be under the power of some man. Now every woman is under the power of the Pope. Therefore the text in question does not prove that a woman may not reign, and is no bar to the king's title either to England or France[1]. It was fortunate for Fortescue that he had not to write his recantation in the days of Queen Elizabeth[2].

Miscellaneous writings of Fortescue.

I shall speak next of the miscellaneous writings of Fortescue, leaving the constitutional works, as the most important, to be dealt with last. In this class the most important tract is the 'Dialogue between Understanding and Faith[3].' It is moreover the only one the authenticity of which is tolerably certain. It is a touching and beautiful little tract, and deals with the old question which has perplexed men's hearts ever since the days of Job; the prosperity of the ungodly and the affliction of the righteous, with special reference however to the revolutions of kingdoms. Understanding, like David, is 'grieved at the wicked.' 'Alas!' she cries, 'howe many just and peasible creatures have borne the payne and angwissh of this werre! Also howe many men of honest livyng have suffred dethe!

'Understanding and Faith.'

[1] Works, pp. 533–4.

[2] Lord Carlingford (Works, pp. 366* f.) is able to illustrate several of Fortescue's arguments from John Knox's writings against the 'regiment of women,' which, though primarily directed against Mary Tudor, gave scarcely less offence to Queen Elizabeth. It is fair to add that there are some passages in the *De Naturâ Legis Naturæ* which prepare the way for this change of front, and somewhat lessen the amount of inconsistency. Thus in ii. c. 46 he says, 'Non tamen omnis aut aliqua mulier sub omnis viri potestate vivere jubetur, ... sed indiffinite [Dominus] ait, "Eris sub potestate viri," quo si sub alicujus viri potestate ipsa fuerit, judicii illius censuram illa non declinat; proposicio namque indiffinita vera est, si in uno supposito ipsa sit vera;' Works, p. 164. This passage seems clearly alluded to in the 'Declaration,' u. s.; cf. also ii. c. 23. These passages however refer to the case of women who are under some temporal dominion. The idea that the necessities of the case were satisfied by subjection to the spiritual authority of the Pope had not then occurred to Fortescue. Fortescue's own submission to Edward IV is amply justified by the principle which he lays down in the *Defensio*, that on the failure of the male line one who is connected with the royal family only through females may be elected 'per Dominos et comunitatem regni,' rather than a complete stranger; Works, p. 508; cf. ib. 153.

[3] Ib. 483–490.

And moche good truly gotyn hath been wikkedly ravisshed and taken away. I se the naughty and reprovable people helped with richesses, and the good honest people beggars and nedy. Also chastite that hath be kept in worshipe, nowe is constrayned and brought into myschevous vylanye. So then thorowe myscheve, necessite, and outrage, man can nat have that is his; nor no good dede may receive the reward after the vertu therof; but strength maykyth right after his owne opynyoun, and overpride usurpeth to have worship without any desert. Where is then the Divyne Justice, or to what tyme is she reserved, when she may nat helpe us nor amende our myscheves when we have moost neede unto her[1]?' For Understanding too, as for David, the problem is 'too hard,' and the solution is sought in the 'sanctuary of God,' in the higher sphere of faith and religion.

Date. There is nothing in the work which can fix its date with any precision. All we can say is that it was written at a time of depression and discouragement, and the references to the triumph of wrong, and to the fact that God sometimes punishes the sins of men by raising up yet greater sinners, seem to prove that it was written after the triumph of Edward IV, though whether after Towton or Tewkesbury cannot be decided. If the latter were the period of its composition, private bereavement may have combined with political disappointment to throw Fortescue for comfort on the consolations of religion[2].

'The Commodities of England.' There is, as far as I can find, no evidence for attributing the tract on 'the Commodities of England[3]' to Fortescue beyond the fact that it is found in the Laud MS. which contains the oldest copy of the *Monarchia*. But as the latter is mutilated at the end, there is nothing to prove any

Question of its authenticity. connexion between the two. Though they are in the same handwriting, this proves nothing, for the copy of the *Monarchia* is not an autograph. By parity of reasoning we might assign to Fortescue the remaining tract in this

[1] Works, p. 490. The thoughts and even the expressions are strikingly like those of Shakespeare's Sonnet lxvi.

[2] Above, Part II. p. 73.

[3] Works, pp. 549–554.

MS., entitled 'This is the rule to know all the wardis of the townshippe of Stebynhithe (Stepney).' My own judgement is strongly against assigning the authorship of 'the Commodities' to Fortescue, until some external evidence be produced to show that it is his. The internal evidence is quite insufficient. It is true that it contains passages which have some relation to parts of the *De Laudibus* and *Monarchia*; but Fortescue was not the only person who wrote on such subjects; and it is far more closely related to such works as the 'Libel of English Policy,' &c. If it were Fortescue's, it would be the earliest of his extant works, for it must have been written before the loss of Guienne in 1451.

The 'Twenty-two Righteousnesses belonging to a King.'

There is equally little evidence for attributing to Fortescue the tract on 'The Twenty-two Righteousnesses belonging to a King[1].' In Stowe's MS., and in the Yelverton MS. from which Stowe copied, it follows the *Monarchia*. But it certainly is not true, as Lord Clermont asserts[2], that in Stowe's MS. it forms 'the last chapter' of that work; for at the end of the *Monarchia* is written, 'Explicit (?) Ser John Ffortescu upon the Governaunce of England,' and then follows the other trace without any hint as to its author. It is also clearly separated from the *Monarchia* in the Yelverton MS. It is quite unworthy of Fortescue, the thoughts being commonplace and poor.

'Advice to Purchasers of Land.'

'Advice to Purchasers of Land[3]' is a rhyming enumeration of the points to be attended to before buying an estate. The authority for assigning this to our author is the heading 'Secundum Fortescu' in the Rawlinson copy[4]. But it seems more probable that it is a mere *memoria technica* which was current in the Middle Ages, for Mr. Gairdner has printed[5] a slightly different version from the Lambeth MS. 306, which gives no hint of its being by Fortescue. The only point of any interest is the estimate given of the

[1] Works, pp. 477–8.
[2] Ib. 447.
[3] Ib. 543–4.
[4] Rawlinson MS. B. 252.
[5] Three Fifteenth Cent. Chronicles, p. xxvi.

value of land, which in the former version is calculated at fifteen, and in the latter at ten years' purchase.

Constitutional works of Fortescue.

The second class of Fortescue's works is the most important, and it is to these works that he owes the permanent place which he has earned among constitutional writers. The works of previous English lawyers like Glanville and Bracton were legal rather than constitutional, while the political treatises of other mediæval writers have little reference to any existing state of things. Dr. Riezler has remarked [1] that in none of them is there any attempt to give a theoretical analysis of feudalism, the political system under which the Middle Ages actually lived. The writers are content for the most part to borrow from or comment upon Aristotle, and except when they touch upon the great question of the relation between the secular and ecclesiastical power, whether in its abstract form or in reference to the concrete instances which from time to time arose, they have little to say that bears upon practical politics [2]. Mediæval political theorizing is too much in the air, and this gives a certain character of unreality to even the most ingenious and interesting speculations. Fortescue first of mediæval writers brings down political philosophy from the clouds to earth by basing his theoretical analysis upon observation of existing constitutions. He borrows some of his terminology and many of his illustrations from previous writers, but the most valuable part of his speculations is derived from his own experience of the government of England [3]; and on the basis of that experience he analyses the nature of constitutional monarchy. The earliest work in which he attempted this task was the former part of the *De Naturâ Legis Naturæ*. Setting out from the proposition

Unpractical character of mediæval political philosophy.

Fortescue the first to base his political theories on observation and practice.

[1] Riezler, Die literarischen Widersacher der Päpste, p. 131.

[2] The Italian writers form perhaps a partial exception to this rule. The feudal system never had much hold on Italy, and the circumstances of the Italian Republics of the Middle Ages sufficiently resembled those of the Greek cities to make the application of arguments derived from the latter less of an unreality in their case than in that of most mediæval governments. And some of the greatest publicists of the Middle Ages were Italians; e. g. St. Thomas Aquinas and Marsiglio of Padua.

[3] For the proof of this statement, see the notes to Chap. i.

that it is by the Law of Nature that the question of the right succession to kingdoms must be determined, he proceeds to discuss the nature of that law, and in the course of his argument he is led, by not very obvious links of connexion, to dilate upon the origin of government and its various kinds. These are three in number:—*Dominium Regale*, or absolute monarchy; *Dominium Politicum*, or republican government; and the mixture of the two, *Dominium Politicum et Regale*, which is constitutional monarchy. The difference between the first and the third class of governments is, that in the latter the subjects are not bound to obey any laws, or pay any taxes, to which they have not given their consent[1]. To this distinction Fortescue remains faithful throughout all his political writings. There is however in the *De Naturâ* a passage[2] not found in the later works, in which Fortescue admits that even a politic or constitutional king may sometimes be obliged to rule absolutely (regaliter). All cases cannot be determined by statutes and customs, and something must be left to the king's discretion (arbitrium); especially the mitigation or remission of pains and penalties, when not contrary to law or the well-being of his subjects[3]. So too a sudden out-

The *De Naturâ Legis Naturæ*, Part I.

Divisions of Governments.

[1] c. 16; Works, pp. 77–8.

[2] cc. 24 sq.; Works, pp. 85–7.

[3] As this passage is rather important as bearing on the question of the dispensing power of the crown, I give Fortescue's exact words: 'ad libitum etiam tuum tu semper regis omnia criminalia, et pœnas cunctas moderaris vel remittis: dummodo sic facere poteris sine subditorum jactura, et offensa consuetudinum et statutorum regni tui;' u. s. p. 85. On the dispensing power of the crown during the Middle Ages, see S. C. H. ii. 573, 579–582. The exercise of this power was more frequent in the Middle Ages than we should consider consistent with constitutional government, but it was often rendered necessary by the unwise minuteness of many mediæval statutes. These exemptions were often granted in the Privy Council. Among the statutes dispensed with most frequently are the Statutes of the Staple; P. P. C. iii. 115, v. 280, 316, vi. 117–8; Rot. Parl. iii. 661 a, &c. [These exemptions were often complained of in Parliament; e. g. Rot. Parl. iii. 661 a, and were forbidden by Stat. 14 Hen. VI, c. 2; cf. Rot. Parl. iv. 332 b, 490 a]; the Statute of Mortmain; P. P. C. iii. 37, 53, 124, 130, iv. 154–5, v. 274; the Statutes forbidding the export of coin, &c.; ib. iv. 118–9, 120–1, 152–4, &c.; those placing restrictions on the royal power of making grants; ib. ii. 305, 308; Rymer, ix. 217, x. 802, xi. 529, &c.; cf. notes to Chap. xix. below; and that forbidding the practice of alchemy; ib. xi. 128, 240, 637,

break of foreign war or domestic rebellion may oblige the king to act despotically, simply because there is not time to observe the usual legal and constitutional formalities; and then, says Fortescue, in language which recalls the words of Edward I[1], the king may be forced to seize the goods of his subjects, and expose some of them to danger for the sake of the safety of the whole; but, he adds, the king is bound to expose himself to danger for the sake of his kingdom most of all. The *De Naturâ* was written, as we have seen, in Scotland, i.e. between 1461 and 1464. It was intended specially for Prince Edward of Lancaster, as we learn from the *De Laudibus*[2].

Date.

The *De Laudibus Legum Angliæ.*

In the last-named work Fortescue maintains the distinction between absolute and limited monarchy laid down in the *De Naturâ*; but he adds an account of the different origin of the two forms of government which is new, and is probably derived from Vincent of Beauvais[3]. The origin of the former kind of monarchy he traces to conquest; that of the latter to the consent and election of a body of men desiring to form themselves into a state[4]. Thus in a constitutional monarchy the royal power is derived from the people[5]. The travels of Fortescue have moreover enabled

Origin of Governments.

&c. (For the Statute itself, cf. St. 5 Hen. IV, c. 4; Rot. Parl. iii. 540 a.) In the case of the Statutes of Provisors the dispensing power was sometimes specially conferred upon the crown by Parliament; e.g. Rot. Parl. iii. 428 b, 458 b; cf. 460 b, 595 a. Henry IV made a most liberal use of this power, granting to all graduates of Oxford and Cambridge permission to sue for Papal Provisions; Rymer, viii. 339. Perhaps in consequence of this, the power was withdrawn from the crown by St. 9 Hen. IV, c. 8; Rot. Parl. iii. 621 a. But in 3 Hen. V the Commons complained that the Universities were ruined by the enforcement of the Statute of Provisors; cf. Lenz, König Sigismund, pp. 147 f.

[1] Matt. Westm. p. 430; Stubbs, Select Charters, p. 442.

[2] 'Opusculum, quod tui contemplatione de *Naturâ Legis Naturæ* exaravi;' De Laud. c. 9. It should be noted that the title *De Naturâ &c.* applies in strictness only to the first part of the work; that of the second part being *De Jure Succedendi in Suppremis Regnis* (see Works, pp. 64, 115); while the full title of the whole work is 'De Naturâ Legis Naturæ, et de ejus Censura in Successione Regnorum Supprema;' ib. p. 65.

[3] De Morali Principis Institutione, cc. 2–4. See notes to Chap. ii. below.

[4] cc. 11–13.

[5] 'Ex populo erumpit regnum;' 'Potestatem a populo effluxam ipse (rex) habet;' c. 13.

him to add Scotland to the number of constitutional monarchies[1], and to give a striking picture of the state of France under Louis XI[2], which now becomes for him the type of an absolute government. The part of the *De Laudibus* which is not directly constitutional consists of exhortations to Prince Edward of Lancaster, to whom the work is addressed, to study the laws of the country which he will one day have to rule, of discussions of some points in which the English and the civil law are at variance, and of descriptions of English social life, of the mode of life in the Inns of Court, the ceremonies customary on the appointment of a Serjeant-at-Law, a Judge, etc. All these have been so frequently quoted that there is no need to analyse them minutely here. The *De Laudibus* is in fact by far the best known of Fortescue's works. It was first printed in 1537, and has been reprinted more than a dozen times since[3]. Until 1714 it was the only one of Fortescue's works in print. Selden was acquainted with the *Monarchia*, and the 'Declaration upon Certain Writings,' &c.[4] The *De Laudibus* was written, as the author himself informs us,

The *De Laudibus* the most popular of Fortescue's works.

Date.

[1] c. 13.

[2] c. 35.

[3] Lord Clermont has given a list of the editions; Works, pp. 335–6. He does not however mention the curious Commentaries on the *De Laudibus* by Waterhous (folio, London, 1663). They are however noticed by Gregor in the Preface to his edition, who calls them 'very jejune and tedious, both as to matter and style.' Tedious they certainly are, and they are written in the most acutely latinized style of the seventeenth century. But amid all the pedantry and prolixity there is much genuine learning. The author is however continually hampered by his attempt to make Fortescue talk the language of the Caroline restoration. Thus, on the passage cited above on the popular origin of constitutional monarchy he says: 'I shall vindicate our Chancellour from any intendment here to approve popular Governments or the insolencies of them . . . (He) is not to be understood as applying these words in their strictness to the Government of England, which is an Imperial Crown, and is not alloyed by the politique admissions into it;' pp. 199 f.

[4] Selden's Preface to the *De Laudibus*. Selden must also have known the *De Naturâ, &c.* The Lambeth MS. 262 which contains all three tracts formerly belonged to him; below, pp. 90–1. But though Fortescue in the *De Laudibus* cites the *De Naturâ* five times, Selden in his notes to the former work never once shows his knowledge of the latter. But, as Gregor has remarked, Selden's notes seem to have been written hastily, 'to gratify the importunity of a book-seller, and thereby to recommend a new edition;' Preface, p. iii.

during the stay of the Lancastrian exiles at St. Mighel in Barrois, and the evident reference in the twenty-second chapter to the case of Sir Thomas Coke in the eighth year of Edward IV[1] fixes the date of its composition to the years 1468–1470.

The *Monarchia*, its interest.

The remaining work of Fortescue in this division is the one now presented to the reader. Apart from the intrinsic value of the work, it has a special interest as being the earliest constitutional treatise written in the English language. The theoretical portion of the work[2] is little more than a translation and recasting of the corresponding portions of the *De Laudibus*. Strictly speaking, it is only to this first part of the work that the title adopted by its first editor, 'The Difference between an Absolute and Limited Monarchy,' can be said to apply. The remainder of the work travels far beyond this purely speculative question, and dealing with the actual evils of the time, attempts to find a practical remedy for them. The scope of the work is much better described by the title which it bears in the Yelverton MS., 'Sir John Fortescue on the Governance of England;' while its contents are well summarized in the preface which the scribe of the Cambridge MS. has prefixed to it, 'A Treatise intituled *Jus Regale* and *Jus Politicum et Regale*, comprehending for good Example memorable Councells of Estate Affaires: Namelie as touchinge the King's charges ordinary and extraordinary, Enlarginge of the Revenewes of the Crowne, disposeinge of Offices and Rewardes for Service, Ellecting of Councelloures, and the disposeinge and orderinge of all other affaires of the Kinge, Kingdome and Court.'

Its scope.

Thus though the *Monarchia*[3] is much less known and read than the *De Laudibus*, its historical interest is in some ways very much greater. The subjects discussed in the treatise and their relation to the history of the time are so

[1] On this see Gairdner, Collections of a London Citizen, pp. xxxiii. ff.; Biog. Brit. iii. 1992.

[2] cc. 1–3; or perhaps 1–4. See notes to Chap. i. below.

[3] I cite the present treatise under this title for the sake of shortness.

fully discussed in the notes and in the first part of this Introduction, that it is unnecessary to recapitulate them here. A reference to the notes will show that many of the remedies proposed by Fortescue had been already suggested or tried in Parliament, though Fortescue no doubt extends and systematizes these suggestions. The point in which he shows the most boldness and originality is in his scheme for the re-organization of the Privy Council. In this, and in his proposals for permanently endowing the crown and reducing the power of the nobles, he certainly prepares the way, however unconsciously, for what it is the fashion to call the New Monarchy. I am therefore unable to regard Fortescue's scheme of reform, as Dr. Stubbs apparently does[1], as being in the main an exhortation to Edward IV to revert to the Lancastrian system of government. I would rather say that Fortescue, while remaining true to the great constitutional principles which he had previously enunciated, urges the king to avoid the main weaknesses of Lancastrian rule, its unsound finance, its subserviency to aristocratic influence, its lack of 'governance' and justice.

Fortescue's suggestions, how far original.

He prepares the way for the New Monarchy.

But was the king to whom the *Monarchia* was addressed certainly Edward IV? The answer to this question depends mainly on the reading to be adopted in a passage at the end of Chapter xix. It is therefore necessary, as a preliminary, to give some account of the manuscripts in which the *Monarchia* is preserved. These, as far as I know, are ten in number[2]. I have collated them all.

To whom was the *Monarchia* addressed?

The MSS.

1. Laud 593. (Cited as L.) This is the MS. on which the text of the present edition is based. It is dated by Mr. Macray about 1480–1490. It is a small thin folio, and contains besides the *Monarchia* only the tract 'On the Commodities of England' noticed above, and a list of 'the wardis of the townshippe of Stebyn hithe' (Stepney).

Laud.

[1] Const. Hist. iii. 243–6.

[2] Four in the Bodleian, viz. Laud 593, Digby 198, Digby 145, Rawlinson B. 384; three in the British Museum, Cott. Claud. A. viii, Harleian 1759, Harleian 542; one at Lambeth, 262; one in Lord Calthorpe's possession, Yelverton MSS. vol. 35; and one in the Cambridge University Library, ll. 3. 11.

The MS. is well and correctly written. Here and there it has been retouched by a later hand with different coloured ink. But the changes made are for the most part only orthographical; and the original reading is nearly always recoverable. The most frequent alterations are of *u* into *v*, *i* into *y*, and vice versâ; the changes being generally in the direction opposed to modern usage. This MS. seems to have belonged to a family of the name of Bedingfield, who were merchants; and the names of various members of the family, Francis, Mary, Edmund, Henry Bedingfield are scrawled on the margins of several leaves. It came into the possession of Archbishop Laud in 1633. This MS. seems to stand quite alone among the MSS. of the *Monarchia*. It has peculiarities, especially in the division of the chapters, which are not reproduced in any of the other MSS. It is not however Fortescue's autograph, for it has some small omissions and mistakes, which could hardly be made by a man writing down his own thoughts, though quite possible to a copyist. Unfortunately it is mutilated at the middle of Chapter xix, so that on the most interesting problem raised by the text this MS. is for us silent.

Cotton. 2. Cotton MS. Claudius A. viii. (Cited as C.) This is a miscellaneous volume relating to English history. It is in quarto, and the *Monarchia* occupies ff. 172–194 according to the old foliation. The handwriting according to Mr. Maunde Thompson, the head of the MS. department of the British Museum, is of the reign of Henry VII, about the end of the fifteenth century. This is also a very correct and well-written MS., and might perhaps dispute with L the claim to be made the basis of the text of an edition. Of the orthographical and other peculiarities of this MS. the reader will be able to judge for himself, as the concluding portion of the work which is wanting in L is here supplied from C. Unfortunately it has been a good deal cropped by the binder, and thus many of the titles of the chapters, which in this MS. are written in the margin, have been mutilated. At the top of the first page is the following:

'[This discourse] was wrighten to King Henry the Sixt by S^r^ John Fortescue, Lord Chancelor.'

Yelverton. 3. Yelverton MSS. vol. 35. (Cited as Y.) This is a volume consisting mainly of documents relating to English history. It is in small folio. Some additional leaves have been inserted at the beginning, middle, and end of the volume. With the exception of these additions the whole of the volume is in the same small and neat hand. Owing to the fact of this MS. being in a private collection I was unable to obtain the judgement of an expert as to the age of the handwriting. I should be inclined to assign it to the first half of the sixteenth century. But whatever the exact date of it may be, the volume is of very great interest. In the first place it is certainly the source from which the chronicler Stowe derived not only his transcript of the *Monarchia*, but also many other documents which he has inserted in his Annals, or which others have published from his MSS. The *Monarchia* occupies ff. 130–145, according to the old foliation, which has been deranged by the insertions alluded to above. It is preceded by the chapter entitled 'Example what good counseill helpith' &c., and followed by the 'Twenty-two Righteousnesses of a King.' The latter of these is as we have seen probably not by Fortescue, the former looks like an alternative version of Chapter xvi. of the present work[1]. But this MS. contains another document no less closely connected with the *Monarchia*; viz. 'The Articles sent from the Prince to the Earl of Warwick' in 1470[2]. No one who compares them with the *Monarchia* can doubt that they were drawn up by Fortescue, and the evidence which they afford must be taken into account in attempting to determine the occasion and date of the composition of the *Monarchia*. The text of the latter work in MS. Y presents very many resemblances to that of C[3], so that I am inclined to think that either Y is taken from C, or that both are derived

The 'Articles sent from the Prince.'

Drawn up by Fortescue.

Relation of Cotton and Yelverton MSS.

[1] See it printed in Appendix A.
[2] See it printed in Appendix B.
[3] For the proof of this and similar statements, the reader is referred to the Critical Notes.

from a common source, probably the latter. But the differences are even more striking than the resemblances; for while C has reproduced the original with great fidelity, Y has dealt extremely freely with it, sometimes compressing, more often expanding and amplifying expressions, and in especial dividing and naming some of the chapters in a way wholly peculiar to itself and the MSS. derived from it. Moreover, in Chapter xix. the name of Henry VI occurs where the other MSS. have Edward IV. The significance of this will be discussed later. Of the orthographical and other peculiarities of this MS. the reader may form a judgement from the Appendices A and B, which are printed from it.

Harleian I. 4. Harleian MS. 542. (Cited as H^1.) This is a small quarto volume containing part of Stowe's historical collections. The *Monarchia* occupies ff. 125–140, and is entirely in the handwriting of Stowe himself. I place this MS. next to Y because it is unquestionably copied from it. It agrees with Y *in all the points* which have been enumerated above as distinguishing Y from other MSS. The only differences are those due to Stowe's peculiar orthography, and to the occasional modernization of a phrase. Except where the contrary is stated, it may be assumed that the readings of H^1 agree with those of Y, and therefore they are not separately given.

5, 6, 7. We now come to a group of three MSS., which agree so closely in many minute points that the conclusion is irresistibly forced upon us that they have some common source. On the other hand no one of them is copied from either of the other two, for each of the three has important lacunæ which do not occur in the remaining pair. The three MSS. are as follows:—

Lambeth. 5. Lambeth 262. (Cited as Lb.) This is a folio volume consisting entirely of Fortescue's works. It contains the *De Naturâ Legis Naturæ*, the *Monarchia*, and the 'Declaration upon Certain Writings,' &c., the first-named work being, I think, in a different hand from the two last. The volume formerly belonged to Selden; on the top margin

of the first folio is written: 'περὶ παντὸς τὴν Ἐλευθερίαν. J. Selden.' The *Monarchia* occupies ff. 106–128. It is I think all in the same hand, though the character of the hand changes slightly about half way through, becoming rather less formal. The handwriting is assigned to the sixteenth century, and I should be inclined to place it rather early in that century. The MS. is well and clearly written, and the scribe has I think followed his original more closely than those of the two next MSS. have done. In one case at least he has preserved a defective reading which the others have corrected each in his own way. For this reason I place this MS. at the head of the group, though it is probably not earlier than the MS. to be mentioned next.

Digby I.

6. Digby 198. (Cited as D^1.) This is a small thin folio. It consists, like the last, entirely of Fortescue's writings, and contains the *De Laudibus*, the *Monarchia*, and the 'Declaration upon Certain Writings,' &c., the last being incomplete. The whole volume is in the same hand. The *Monarchia* occupies ff. 48–75. On palæographical grounds Mr. Macray was inclined to assign the MS. to about the year 1500. For historical reasons I think that the date must be put a little later, because of the evident protestantism of the author. In two out of the four passages in which the Pope is mentioned D^1 alters the expression into 'the Bishop of Rome,' in one passage the phrase has been omitted altogether, in the remaining one it has been allowed to pass. The writing is bold and vigorous, but exceedingly careless. Lacunæ, caused generally by the recurrence of a word or phrase, are frequent; on the other hand, words and phrases are repeated twice, and in one instance even three times, and mistakes are frequent and palpable.

The scribe a Protestant.

Harleian II.

7. Harleian MS. 1757. (Cited at H^2.) This is a miscellaneous volume in folio, relating mainly to English history. It contains of Fortescue's works (besides the *Monarchia*) the *De Laudibus*, and two copies of the 'Declaration,' &c., one perfect, the other imperfect. The *Monarchia* occupies ff. 196–203. The handwriting, ac-

cording to Mr. Thompson, is of the middle of the sixteenth century. According to Lord Clermont, the copy of the *De Laudibus* in this volume is 'in the handwriting of Glover, who lived in the reign of Elizabeth[1].' If this refers to the first portion of the *De Laudibus* (for the latter part is in a different hand), then the *Monarchia* is also in Glover's hand. It ends abruptly in the middle of a sentence in Chapter xv. This however is not the result of mutilation, as nearly half of the last page is left blank. For some reason the scribe left his work in an unfinished state. It is further to be noticed that Lb. and D^1 conclude with Chapter xviii. This is neither due to mutilation, as in the case of L, nor to incompleteness, as in the case of H^2; for at the end of Chapter xviii both MSS. add the word *Finis*. So that we must suppose either that the scribes deliberately abstained from copying the last two chapters, or that this group of MSS. represents an earlier edition of the work, and that the last two chapters were added afterwards.

8, 9, 10. In the last place we have another group of three MSS., also closely related, but in a different way from those of the preceding group. For here the first MS. is almost certainly the original, mediately or immediately, of the other two. The three MSS. are as follows:—

Digby II. 8. Digby 145. (Cited as D^2.) This MS. has a pathetic interest, for it is in the handwriting of Sir Adrian Fortescue, the grandson of the author's younger brother Sir Richard Fortescue, who was attainted and beheaded in 1539, probably for no other crime than fidelity to the faith of his fathers[2]. The volume is a small folio, and contains, besides the *Monarchia*, a copy of Piers the Plowman[3], also in Sir Adrian's hand, and at the end of the volume some proverbs which I differ from Lord Clermont[4] in thinking to be by a different hand. The *Monarchia* occupies ff. 131–159, and the date of the writing is fixed

[1] Works, p. 366.
[2] Family History, p. 272.
[3] Described by Professor Skeat in the Preface to his Edition of the 'A Text' of Piers the Plowman, p. xxiv. But he has certainly dated the MS. too early.
[4] Family History, pp. 263–5.

by the entry at the end: 'Explicit Liber . . . scriptus manu propria mei Adriani Fortescue Militis, 1532.' This MS. was made the basis of his text by the first editor, Lord Fortescue of Credan[1], and his text has been reprinted practically without alteration by Lord Clermont; so that the characteristics of this MS. can be easily studied by any one desirous of doing so.

Rawlinson.

9. Rawlinson B. 384. (Cited as R.) This is a small thin folio containing miscellaneous collections on English history. The *Monarchia* occupies ff. 42–68. It is written in two different hands, both of about the middle of the seventeenth century. It follows closely the text of D^2,[2] though, for reasons which will presently appear, I incline to think that it was copied not immediately from D^2, but from some MS. which copied D^2. The writer or his model has modernized the language a good deal, and in one instance in an absurdly mechanical way. Having in the first Chapter altered the word 'tayles' (=tallia, tallagium), not incorrectly, into 'taxes,' he applies the same interpretation to the word in Chapter xi, where it means 'entails.'

Cambridge.

10. Cambridge University Library, ll. 3. 11. (Cited as Cb.) This is a folio volume containing collections relating mainly to English history in the seventeenth century, and in hands of that period. The *Monarchia* occupies ff. 214–241. The text closely follows D^2. Where it differs from D^2, it generally agrees with R, and these coincidences are I think too frequent to be accounted for by the theory of two scribes independently modernizing the same original. On the other hand, neither R nor Cb. copied from the other, for each has lacunæ which the other has not. Hence we must suppose that both are copied from a text which was taken from D^2. But besides a text of the type

[1] In the margin he gives various readings from Laud and Digby 198. He says that he also collated a Cotton MS.; but as he gives no variants it is impossible to control this statement. It is curious that Lord Clermont has altogether overlooked Digby 198, in spite of his predecessor's frequent references to it. For proof of this omission see especially Works, pp. 336, 346.

[2] And therefore its readings are very seldom cited.

of D^2, the writer of Cb. must have also had before him a text of the Y type. For he has taken from it not only the 'Example what good Councell helpithe,' &c.[1], which is only found in MSS. of that type; but also the titles of Chapters viii, xii, and xiii, which are wanting in R; probably because they are crossed out in D^2. Also in Chapter xi he has given the peculiar title which appears in Y, though he has afterwards crossed it out and substituted the ordinary one. Moreover, on his own motion he has not merely altered, like D^1, but wholly omitted all the passages in which the Pope is mentioned.

Epitome.

Besides these ten MSS. of the *Monarchia*, there exists an Epitome of it in Latin, under the title 'Epitome singularis cujusdam Politici Discursus Edwardi 4 temporibus scripti,' &c. Hearne seems to have thought of publishing this, for in Rawlinson Miscell. 326 there is a copy in his handwriting headed 'Sir John Fortescue prepared for the press. Thursday, Jan. 19, 1726.' The original from which Hearne copied was formerly in the possession of Beaupré Bell, Esq., Jun., by whom it was left to Trinity College, Cambridge[2]. The Epitome seems to have been made from a MS. of the type of D^2. It is occasionally cited as 'Epit.' The handwriting is of the reign of James I.

Occasion of the composition of the *Monarchia*.

After this review of the history of the text we may return to the consideration of the question before us; viz. the occasion of the composition of the *Monarchia*. The passage on which most turns is one at the end of Chapter xix, beginning: 'I blissed be oure Lord God for that he hath sent King Edward the iiijth to reigne vpon us,' &c. This passage is mutilated in L; Lb., D^1, and H^2 stop short of this chapter; Y and H^1 read 'Henry VI' for 'Edward IV'; while C, though reading 'Edward IV' here, asserts

[1] This he regards as the first chapter of the *Monarchia*, for he says of it: 'The first chapter of which Treatise ys thus verba[lly] out of an old Manuscript written and copied.' The 'old manuscript' would be the MS. of the Y type. The scribe of this MS. was very ignorant of Latin. Almost all the Latin quotations are wrong.

[2] It is numbered R. 5. 18. I have compared Hearne's copy with the original, and found it very correct.

that the treatise was 'wrighten to King Henry the Sixt[1].' Lord Clermont[2] has summarily rejected the idea that the *Monarchia* can have been composed for Henry VI, pointing out that the references in Chapter ix to the war of the Public Weal in 1465 and to the death of James II of Scotland in 1460 make it impossible that it should have been written under Henry VI. But he has not remarked that neither of these arguments precludes the possibility of its having been composed for the Lancastrian restoration of 1470. And the fact that some of the most important recommendations afterwards embodied in the *Monarchia* certainly were drawn up by Fortescue for the government of the restoration[3] entitles that idea to more serious consideration. Much more weighty is Lord Clermont's contention that the expression 'this land' used of England in Chapter x implies that Fortescue wrote the work in England, and therefore after 1471. There would seem then to be two main theories possible.

Was it written for the Lancastrian restoration?

1. We may suppose that the *Monarchia* was written in the first instance for the Lancastrian restoration of 1470, and that it was afterwards recast by Fortescue and adapted to Edward IV. In this case the reading of Y and H^1 and the heading of C would represent the original form of the work.

Two theories.

2. The *Monarchia* may have been written originally for Edward IV, and the scribe of Y writing under the Tudors may have altered the reading to avoid shocking Tudor susceptibilities. This nineteenth chapter may have been mutilated in L and omitted in the original of D^1, Lb., and H^2 for the same reason[4].

[1] This discrepancy struck the maker of the Index to C; for he objects 'verum in fine laudat Edw. 4.'

[2] Works, p. 446.

[3] See Appendix B.

[4] There is a curious parallel to this in the Prologue to W. Worcester's Collections. It was evidently first addressed to Richard III. But afterwards the letters *Rich* were erased and *Edw* written in their place, but the number 'thred' (third) was not altered. This has escaped the editor (Mr. Stevenson), who assumes that Edward IV is the monarch addressed. But Edward IV is expressly spoken of as 'your most nobille brodyr and predecessoure.' Moreover, after each mention of Henry VI there is an erasure in the MS.;

Probably written under Edward IV.

On the whole, the second theory seems best to account for all the facts. In any case the *Monarchia* and the 'Declaration upon Certain Writings,' &c. are the two latest of Fortescue's extant works. And with this discussion we may bring to a close our consideration of those works. Of works now lost which were attributed to Fortescue, Lord Clermont[1] mentions three; a genealogy of the house of Lancaster, a genealogy of the Scottish kings, and a book of devotion. Stowe makes a quotation from Fortescue which, as far as I know, is not in any of his existing writings[2].

Fortescue's literary attainments.

I shall next say a few words on Fortescue's literary attainments, the extent of his reading, &c. In the *De Laudibus*, c. 49, he tells us that on festival days the students in the Inns of Court and Chancery occupied themselves with the reading of Chronicles and Scripture[3]. Both these lines of study have left their mark on Fortescue's works.

Biblical and historical knowledge.

His knowledge of the Bible was evidently extensive, and comes out most strongly in the *De Naturâ Legis Naturæ*, where in two chapters out of every three the arguments are supported by texts of Scripture. Biblical quotations are also fairly numerous in the *De Laudibus*. In the study of history Fortescue was evidently much interested. I have not been able to determine with any certainty whence he derived his knowledge of foreign history. He quotes the Chronicles of France, Spain, and

probably some such phrase as '*named* Kyng' or 'Kyng in deed but not in right' has been cancelled; see English in France, ii. [521] ff. On the other hand, if Fortescue himself altered the work to suit Edward IV, we may compare the similar adaptation of Lydgate's poem on the Kings of England; see Warkworth's Chronicle, pp. xxii, 67–8; Gregory, p. 54; and the still more violent change of tone in Capgrave; see De Illustr. Henr. pp. xiii f.

[1] Works, p. 556.

[2] Stowe, Annals, p. 325 b: 'King Richard was imprisoned in Pomfrait Castle, where xv. dayes and nights they vexed him with continuall hunger, thirst and cold, and finally bereft him of his life, with such a kinde of death as never before that time was knowne in England (saith Sir John Fortiscute).'

[3] The 'talkyng of cronycles' was one of the occupations of the squires of the household; Ordinances, &c., p. 46. Henry VI was a great reader of Chronicles and Scripture; Blakman, pp. 289, 299; Whethamstede, i. 295. It was on this ground that the Lords applied to him to assist them in the refutation of York's claim; Rot. Parl. v. 376 a.

Denmark[1]; of Rome, Athens, and Sparta[2]. To English history his references are constant, especially in the tracts bearing on the Succession; but he does not often give his authorities, except in the 'Declaration upon Certain Writings,' where he cites the Polychronicon, Petrus Pictavensis, Nicolas Trivet[3], and Ralph de Diceto[4]. He cites also two chronicles, one of which he calls the Chronicle of St. Alban's, the other he calls 'Flores Cronicarum' (sic) or 'Flores Hystoriarum[5];'—unless these are two separate works. Owing to the way in which the St. Alban's chroniclers copied not only the substance, but the titles of their predecessors' works[6], it is impossible to say what are the precise chronicles which Fortescue means. He expressly says that some of these chronicles were seen by him for the first time after his return from exile[7]. For his account of the early history of Britain he may have used the Chronicle of Richard Rede, of which we know that he possessed a copy[8].

Authors quoted by Fortescue.

At the end of Lord Clermont's edition of the *De Naturâ Legis Naturæ* Lord Carlingford has placed a most useful table of all the quotations cited in that work[9]. The list of authors is a stately one; and if all the works of Fortescue were included, some further names would have to be added. But it would be unsafe to take the list with Lord Carlingford as evidence of the extent of Fortescue's reading[10]. If we deducted all the quotations which Fortescue took at second-hand from other works, the extent of his reading would probably be found to shrink considerably. The

Not all read by him.

[1] Infra, Chap. ix; De Laudibus, c. 54.

[2] Infra, Chap. xvi; N. L. N. ii. c. 15.

[3] Works, p. 526.

[4] Ib. 538–9.

[5] Ib. 525, 539 f.

[6] See e. g. Mr. Luard's preface to the Historia Anglorum of Matth. Paris, vol. i.

[7] Works, p. 526.

[8] Infra, Chaps. ii, iii, and notes thereto; De Laudibus, c. 17. The passage in this last chapter in which Fortescue maintains that the laws of England have never changed since the days of the Britons, a passage which has been seriously supported by Coke, and no less seriously refuted by Selden (see Selden and Amos ad loc.), rests perhaps on Rede, f. 6, r°, or on Higden, ii. 90 ff.

[9] Works, pp. 347* ff.

[10] Ib. 346*.

most important question in this relation is that of Fortescue's Aristotelian quotations, which will therefore be reserved till the last.

Fortescue's acquaintance with the Civil and Canon Law.

As to the extent of Fortescue's acquaintance with the Civil Law I must leave others, more qualified, to speak. I have noticed elsewhere the terms of high respect in which he speaks of that system of jurisprudence[1]. Even higher are the terms in which he speaks of the Canon Law, which he regards as positively inspired[2]. In regard to this point Lord Carlingford says: 'The Corpus Juris Canonici comprises five Codices: the first being the Decretum Gratiani, which is divided into three parts. Fortescue refers to the Decretum only, and to the two first of its parts.... He quotes from the Corpus Glossis Diversorum Illustratum published by order of Pope Gregory XIII[3].'

His relation to Aquinas and others.

Of the relation of Fortescue to St. Thomas Aquinas, Ægidius Romanus, and the *Compendium Morale* of Roger of Waltham, I have spoken at length elsewhere[4]. Of his obligations to Vincent of Beauvais something has also been said[5]. That he knew the latter's *De Morali Principis Institutione* at first-hand I regard as certain, because there is a copy of it in the Rawlinson MS. which once belonged to Fortescue[6]. For the same reason the citation of William of Auvergne's *Cur Deus Homo*[7] is probably genuine. I have shown that Fortescue was well acquainted with Poggio's translation of Diodorus Siculus[8], and from the numerous quotations which he makes from St. Augustine's *De Civitate Dei* I am inclined to think that he was acquainted

[1] Notes to Chap. ii. below. 'Die Geschichte des Römischen Rechts in England .... bleibt noch zu schreiben,' says Dr. Güterbock; Bracton, p. 2. He gives however some references. See also S. C. H. ii. 190.

[2] 'Canones Spiritu Sancto afflati;' N. L. N. i. c. 31; Works, p. 94.

[3] Works, p. 355*.

[4] Notes to Chap. i. below.

[5] Notes to Chap. ii. below.

[6] Ib. This work is cited De Laudibus, c. 54; N. L. N. i. cc. 8, 18. Fortescue probably also knew the *Eruditio Puerorum Regalium;* the verse in De Laud., c. 6, comes from the Prologue of that work; a quotation in N. L. N., i. 5, comes from its third chapter. In one case (N. L. N. ii. c. 18) Fortescue quotes the *Speculum*, but I think not at first-hand.

[7] Cited De Laudibus, c. 4.

[8] Notes to Chap. ii. below.

with it, although in one instance he confesses that he borrows his citation from the *Compendium Morale*[1]. But in other cases we can be pretty sure that his quotations are taken at second-hand from other works; thus the reference to Vegetius in the *De Laudibus* comes from the *De Regimine* of Aquinas[2], that to Helynandus either from the *Compendium* or Vincent of Beauvais[3]. And this may be the case with regard to other isolated quotations from particular authors or works[4]. But besides the plan of borrowing from preceding writers, there were other means open to the mediæval author of decking out his work with an appearance of extensive learning without any very great expenditure of labour. Numerous commonplace books were in existence consisting of striking passages from classical and ecclesiastical authors. Of these the best known is a collection of philosophical maxims extracted from the works of Aristotle (genuine and spurious), Seneca, Boethius, Porphyrius, &c., and going under the name of *Auctoritates Aristotelis*, &c. This collection appears in various forms, but a certain amount of matter is common to them all[5]. Of Fortescue's quotations from Seneca and Boethius, the latter of which are fairly numerous, I can only trace one or two to this source. Boethius' *Consolatio* he may have known at first-hand. The remaining quotations may come from the *Compendium Morale*, which is a perfect mine of such materials. But when we come to the quotations from Aristotle the case is altered. Of these thirty-one are from the *Auctoritates*, eight come from

Second-hand quotations.

Mediæval commonplace books.

Aristotelian quotations.

[1] Works, p. 69*.

[2] De Laudibus, c. 54. This quotation occurs three times in the De Regimine, iii. c. 21; iv. cc. 7, 10. Lord Carlingford's list of quotations and his notes will supply some other instances of borrowing.

[3] De Laudibus, c. 1; cf. Vincent, De Mor. Princ. Inst., c. 15; Compendium, f. 32 a.

[4] Another source from which Fortescue borrows quotations is the Canon Law.

[5] On the origin of the *Auctoritates*, and the various forms which they assume, see the interesting monograph of Prantl, Sitzungsbericht d. bayer. Akad. d. Wissenschaften, July 6, 1867, for a knowledge of which I am indebted to Mr. Ingram Bywater, Fellow of Exeter College, Oxford. The edition which I have used is a small 4to., printed by Gerard Leeu, Antwerp, 1488. I have also used a MS. copy in the Canonici MSS. Pat. Lat. 62. (Bodleian Library.)

Aquinas, six I have failed to trace; but with the above facts before us we may safely assume that they do not come direct from Aristotle[1]; and enough has been said generally to show how rash is the assumption that the number of works cited by a mediæval writer is any test of the real extent of his reading.

Fortescue's observation of foreign countries.

But it was not from books alone or chiefly that Fortescue derived his inspiration. We have seen how on his observation and experience of English political life he based both his constitutional theories and his suggestions of reform. And there are many indications in his works that during his enforced absence from England he attentively studied the institutions and social condition of the countries which he visited, especially France. And all that he saw there only deepened his affection for the institutions of his native land. France is for him the type of a despotism as opposed to the constitutional monarchy of England[2]; and from this fundamental difference he deduces many others which he observes in the condition of the two countries; the misery of the French peasant, as compared with the comfort of the English yeoman[3]; the readiness with which taxes are granted in England, as compared with the 'grudging' which they call forth in France[4]. He contrasts the French and English financial systems, and notes the greater value of the domains of the king and the dowry of the queen in his own country[5]. He rejects indignantly the suggestion that the English Commons would be more submissive if they were made poor like the French[6]; and he positively exults in the greater prevalence of robbery in England as compared with France and Scotland as a proof of the high spirit of the people, 'which no Frenchman has like unto an English man[7].' Coming to social and ad-

Comparison of France and England.

[1] Lord Carlingford's list is on this point a little misleading, for he sometimes refers to the Auctoritates, sometimes to the original text of Aristotle, which creates the impression that Fortescue was acquainted with the latter.

[2] 'The French Kynge reynith upon his People *Dominio Regali*;' inf. Chap. iii.

[3] Infra, Chap. iii; De Laudibus, cc. 29, 35, 36.

[4] Infra, Chaps. iv, xii.

[5] Ib. Chap. x.

[6] Ib. Chap. xii.

[7] Ib. Chap. xiii.

ministrative points, he contrasts the English custom of primogeniture with the equal division prescribed by the civil law[1], and the numerous small properties in England with the *latifundia* of the French nobles[2]. He compares the English county with the French bailliage[3], and illustrates the scale of payment of the members of his proposed new council by reference to the salaries of the councillors in the Parliament of Paris[4]. So too in matters which concern his own profession, he compares the English and French law of succession to entailed estates[5]; and the English Inns of Court with the Universities of France[6]; the length of training of French and English judges[7], and the comparative duration of the 'law's delays' in the two countries[8]. He seems too to have found that his legal French did not help him much in his intercourse with natives, for he says that the French spoken now-a-days is not like that used by lawyers, but is deformed by barbarisms[9].

[1] 'Infra regnum Angliæ . . . . filius senior solus succedit in hereditate paterna, ... quæ jure civili inter masculos dividenda est;' De Laud. c. 40. 'In regno Franciæ viri et feminæ passim dividunt hereditates paternas, et in regno Angliæ . . . . filius senior omne obtinet jus parentum;' N. L. N. ii. c. 4; Works, p. 118. In a document in Rymer, xi. 81, it is expressly noted, that the prevalence of this custom of subdivision in Aquitaine has caused the decay of many notable estates, and loss of services to the crown.

[2] 'Raro ibidem aliqui præter nobiles reperiuntur possessores agrorum . . . extra civitates;' De Laud. c. 29.

[3] Ib. c. 24.

[4] Inf. Chap. xv; cf. App. B.

[5] N. L. N. ii. cc. 10, 38.

[6] De Laud. c. 49.

[7] N. L. N. i. 43.

[8] De Laud. c. 53. Waterhous (p. 583) says that he had personally known many who had been ruined by the delays of the Parliament of Paris. On the length of lawsuits in England, cf. Gascoigne, p. 109; Cont. Croyl. pp. 501–2, 513.

[9] 'Vulgariter quadam ruditate corrupta;' De Laud. c. 48; cf. Amos, ad loc. The use of French in the public administration was at this time declining, and its place was being taken either by English or Latin. The Proceedings of the Council and the Rolls of Parliament alike furnish evidence on this point. But the most striking proof is the fact that Henry V had to refuse to negotiate with France in French, because his ambassadors were ignorant of that language; Rymer, ix. 656–9. Trevisa's remarks on the decline of French in schools and in society are well known; Higden, ii. 160–1. The same seems to have been true of the universities. At Oxford in the fifteenth century there were no lectures in French; Munim. Acad. p. 302. They seem however to have existed at an earlier date; ib. lxx, 438. Fortescue, De Laudibus, c. 48, gives this absence of instruction in French as a reason why Law could not be studied at the universities.

Illustrations of Fortescue's character to be found in his writings.

Piety.

From the writings of Fortescue we may gather some interesting illustrations of his character and opinions; and the picture is on the whole a very pleasing one. I have already drawn attention to the piety and resignation which inspire his little tract on 'Understanding and Faith,' and it is the same spirit which lies at the root of his belief in the ultimate triumph of right and justice. It is on religious, as well as, like St. Thomas, on historical grounds that he is convinced that tyranny must always be short-lived[1]; and he applies to the case of the evil ruler the words of the Psalmist: 'I myself have seen the ungodly in great power, and flourishing like a green bay tree. I went by, and lo, he was gone; I sought him, but his place could nowhere be found[2].' He is as earnest for personal as for constitutional liberty, and where there is any possibility of doubt the decision should always be in favour of freedom[3]. He is full too of the spirit of humanity. His pen refuses to dwell on the horrors of the torture-chamber[4], he would rather that twenty guilty persons should escape than that one guiltless person should be condemned unjustly[5], and he pictures to himself the remorse of a brother-judge who had sentenced an innocent woman to be burned[6]. He has an honourable pride in the judicial profession to which he belongs, which he truly remarks has furnished many illustrious names to the roll of England's worthies[7]. He is not above a little harmless vanity in the matter. He hopes that Prince Edward, when he comes into his power, will make the judges' dress a little more ornate, for the honour of the legal profession, and the worship of the realm[8]. And it cannot be denied that his desire to exalt the character and institutions of his native land has led him sometimes into

Zeal for liberty.

Humanity.

Pride in his profession.

[1] N. L. N. i. c. 7; Works, p. 70; cf. Aquinas, De Regim. i. c. 10.

[2] 'Understanding and Faith,' Works, p. 489.

[3] De Laud. cc. 42, 47; cf. Pecock, Repressor, p. 401: 'Jugement is ever to be 3ouun for fredomys parti.'

[4] 'Fastidit calamus ea literis designare;' De Laud. c. 22.

[5] Ib. c. 27.

[6] Ib. c. 53.

[7] Ib. c. 51.

[8] Ib. On the other hand, Gascoigne seems to have thought that the judges' dress was already too ornate. Formerly he says the judges of England were content with lambskin instead of minever; p. 202.

exaggerations[1]. It is to his credit, however, that he shares to the full that confidence in the capacities of parliamentary government which, as Mr. Rogers has remarked, is characteristic of the best statesmen of the period[2]. The laws of England he says are most excellent, if not actually yet potentially, because any defect in them can be amended in Parliament[3]. Another point which is worthy of notice in Fortescue is his extreme orthodoxy. He revokes by anticipation anything savouring of heresy which he may have written, and submits in all things to the judgement of the Church[4]. Unlike most secular lawyers[5], he is a strong votary of the doctrine of the supremacy of the ecclesiastical over the civil power. He repeats the well-worn argument that the law which directs men to the ultimate end, happiness, is higher than that which points only to the nearer end, virtue[6]. Christ is King of all the world, and the Pope is His vicar upon earth to whom all earthly powers are subject, even to the kissing of his feet[7]. He expressly explains that this is not to be understood of mere spiritual supremacy. Kings are subject to the Pope not only in their persons, but in their temporalities. He may compel them to rule their subjects justly, and punish them if they do not, as Popes have done both to Kings and Emperors before now. Christ the Lord of all the world has placed in the hands of the Pope His vicar both swords, and he is *Rex et Sacerdos*[8]. It is evident that Fortescue was strongly influenced by the papal reaction which followed the Council of Constance. That he allowed himself to be drawn further along the path of political partizanship than we can altogether approve in the case of a man holding judicial position, I have already hinted[9]. But if he erred in this way he nobly atoned for his error by the sacrifices which he made for his cause. Had he chosen to side less actively with Henry, he

Confidence in parliamentary government.

Orthodoxy.

Hierarchical views.

Partizanship.

Fidelity and self-sacrifice.

[1] Above, pp. 22, 29, *notes*.
[2] Gascoigne, Introduction, p. lix.
[3] De Laud. c. 53.
[4] N.L.N.i.c.47; Works, p. 114.
[5] e.g. Bracton; cf. Güterbock, Henricus de Bracton, p. 40.
[6] N. L. N. i. c. 46; Works, p. 113.
[7] Ib. ii. c. 11; Works, p. 126.
[8] 'Declaration upon Writings,' &c., Works, p. 535.
[9] Above, pp. 50–1.

might no doubt have retained his position under Edward, as did most of his colleagues[1]. But he not only gave up position and property to follow his master into exile and poverty, but out of his own means he helped to support his master in his time of need[2].

Fortescue's contemporaries.

Littleton.

Pecock.

Gascoigne.

It is interesting, in conclusion, to notice briefly one or two writers who were contemporary with Fortescue. The interest of Littleton is too exclusively legal to come under consideration here. But Pecock and Gascoigne were also Fortescue's contemporaries. And just as Fortescue prepared the way for changes in the political world, so did Pecock in the ecclesiastical and intellectual world. With Gascoigne the case is different. He does little more than bewail with querulous iteration the prevalence of errors and abuses, and has no constructive force whatever. He is as pessimistic as Fortescue is optimistic. And he deals mainly with ecclesiastical matters, whereas Fortescue confines himself almost wholly to the political world. But they find a common ground of complaint in the corruption and violence of the aristocracy, to which both of them trace many of the evils of the time. More interesting still is the comparison between Fortescue and his younger contemporary Commynes. Commynes entered the service of Charles of Burgundy in 1464[3]. Between that date and 1470 Fortescue was on the Continent, and the Lancastrian exiles were in constant communication with the Court of Burgundy. Did the aged lawyer and the youthful squire ever meet? Was it in any degree from Fortescue that Commynes imbibed his admiration for the English Constitution, and for those liberal principles of government on which it is based[4]? These are questions which it is worth while to ask, though it is unlikely that they will ever be answered.

Com-mynes.

I have said[5] that the interest of the Lancastrian period is

[1] All Henry's judges were reappointed by Edward except the two Chief Justices, Fortescue and Prisot. See Foss, Judges, iv. 390–3; above, p. 50, *note*.

[2] See Henry's letter in Waurin, ed. Dupont, iii. 169 f., quoted above, Part II. p. 59.

[3] Mém. Liv. i. ch. i.

[4] For Commynes' views on the English Constitution, see Liv. iv. ch. 1; v. ch. 19.

[5] Above, p. 3.

largely prospective, and in this character of the period Fortescue undoubtedly shares. In all the literature of the period which I have read, I have found no single reference to any of his works. But in the seventeenth century he was constantly appealed to as an authority by the constitutional party; and his writings played a part not altogether inconsiderable in the preservation of English liberties[1].

Importance of Fortescue in the seventeenth century.

[1] See De Laudibus, ed. Amos, pp. 23, 28, 60, 74, 94–5, 114.

Sir John Fortescue

on the

Governance of England.

CHAPTER I.

THE DEFERENCE BI TWENE DOMINIUM REGALE AND DOMINIUM POLITICUM ET REGALE.

THER bith ij kyndes off kyngdomes, of the wich that on is a lordship callid in laten **dominium regale**, and that other is callid **dominium politicum et regale**. And thai diu*er*sen in that the first kynge mey rule his peple bi suche lawes as he makyth hym self. And therfore he mey sett vppon thaim tayles and other imposicions, such as he wol hym self, w*ith* owt thair assent. The secounde kynge may not rule his peple bi other lawes than such as thai assenten unto. And therfore he mey sett vpon thaim non imposicions w*ith* owt thair owne assent. This diu*er*site is wel taught bi Seynt Thomas, in his boke wich he wrote **ad regem Cipri de regemine principum**. But yet it is more openly tredid in a boke callid **compendium moralis philosophie**, and sumwhat bi Giles in his boke **de regemine principum**. The childeryn of Israell, as saith Seynt Thomas, aftir that God hade chosen thaim **in populum peculiarem et regnum sacerdotale**, were ruled bi hy*m* vndir Juges **regaliter et politice**, in to the tyme that thai desired to haue a kynge, as tho hade al the gentiles, wich we cal peynymes, that hade no kynge but a man that reigned vppon thaim **regaliter tantum**. W*ith* wich desire God was gretly offendyd, as wele for thair folie, as for thair vnkyndnes; that

sithyn thai had a kynge, wich was God, that reigned vppon thaim politekily and roialy, and yet wold chaunge hym for a kynge, a verray man, that wolde reigne vpon hem only roialy. And therfore God manassynge hem made them to be ferde bi thondres and oþer gasteful thynges from the hevene. And whan thai wolde not therby lefe thair folissh desire, he charged þe profet Samuel to declare vnto them the lawe of such a kynge as thai askyd; wich amonge oþer thynges said that he wolde take from thaim thair lande and gyf it to his servantes, and sett thair childeryn in his cartis, and do to thaim such oþer many harmeful thinges, as in the viijth chapiter of the first boke of kynges it mey apere. Wher as bi fore that tyme, while thai were ruled bi God roialy and politikely vndir Juges, it was not lefull to any man for to take from thaim any of thaire godis, or to greve thair childeren þat hade not offendid. Wereby it mey appere that in tho dayis **regímen polítícum et regale** was distyngued **a regemíne tantum regale**; and that it was bettir to the peple to be ruled politekely and roialy, than to be ruled only roialy. Seynt Thomas also in his said boke prasith **dominíum polítícum et regale**, bi cause the prince that reigneth bi such lordshipþe mey not frely falle into tyrannye, as mey the prince that reigneth **regalíter tantum**. And yet thai both bith egall in estate and in poiar, as it mey lightly be shewed and provid by infallyble reason.

CHAPTER II.

WHI OON KING REGNETH REGALITER, AND ANOTHER POLITICE ET REGALITER.

HIT mey *per*aventu*r* be mervellid be some men, whi on reaume is a lordeship*pe* only roialle, and the prince therof rulith it bi his lawe callid **Jus regale**; and a nother kyngdome is a lordship*pe* roiall and politike, and the prince therof rulith hit bi a lawe callid **Jus pollíticum et regale**; sithin thes ij princes bith of egal estate. To this doute it mey be answerde in this man*er*. The first instituc*i*on of thes ij realmes vppon the incorperacion of thaim is cause of this diu*er*site. Whan Nembroth be myght for his owne glorie made and incorp*er*ate the first realme, and subdued it to hymself bi tyrannye, he wolde not have it gou*er*nyd bi any o*þer* rule or lawe, but bi his owne wille; bi wich and for the accomplisshment *þer*of he made it. And therfore though he hade thus made hym a realme, holy scripture disdeyned to call hym a kyng*e*, **quía rex dícítur a regendo**; wich thyng*e* he did not, but oppressyd the peple bi myght, and therfore he was a tirrau*n*t and callid **prímus tírrannorum**. But holy write callith hym **robustus venator coram Domíno**. Ffor as the hunter takyth the wilde beste for to sle and ete hym, so Nembroth subdued to hym the peple with myght, to haue *þer* ser*u*ice and thair god*is*, vsing vppon thaim the lordship*pe* that is callid **domínium regale tantum**. Aftir hym Belus that was first callid a kyng*e*, aftir hym is

sone Ninus, and aftir hym other paynemes, þat bi ensample of Nembroth made hem realmes, wolde not haue thaim ruled bi oþer lawes then be ther owne wylles. Wich lawes ben right gode vndir gode princes, and thair kyngdomes bethe than most resembled to the kyngdome of God, wich reigneth vpon man rulynge hym bi his owne will. Wherfore mony cristen princes vsen the same lawe; and therfore it is that þe lawes seyn, quod príncípí placuít, legís habet vígorem. And thus I suppose first begán in Realmes dominium tantum regale. But aftirwarde, whan mankynde was more mansuete, and bettir disposid to vertu, grete comunaltes, as was the felowshippe that came in to this lande with Brute, willynge to be vnite and made a body pollitike callid a reawme, hauynge an hed to gouerne it;—as aftir the saynge of the philisopher, euery comunalte vnyed of mony parties must nedis haue an hed;—than they chese the same Brute to be þer hed and kynge. And thai and he vpon this incorperacion, institucion, and onynge of hem self into a reaume, ordenyd the same reaume to be ruled and justified by suche lawes as thai all wolde assent vnto; wich lawe therfore is callid pollíticum, and bi cause it is ministrid bi a kynge, it is callid regale. *Policia dicitur a* poles, *quod est plures, et* ycos, *scientia; quo regimen politicum dicitur* regímen plurium scientía síue consílio mínístratum. The kynge of Scottis reignith vppon is peple bi this lawe, *videlicet*, regemíne político et regalí. And as Diodorus Siculus saith in is boke de prísčís hístoríís, the reawme of Egipte is ruled bi the same lawe, and therfore the kynge therof chaungith not his lawes with owt the assent of his peple. And in like fourme as he saith is ruled the kyngdome of Saba in *Felici*

Arabia, and the londe of Libie; and also the more parte of all the reawmes of Affrike. Wich man*er* rule and lordship*pe* the said Diodorus in that boke praisith gretly; ffor it is not only good for the prince, that mey therby þe more surely do justice than bi is owne arbitrment; but it is also good for his peple þ*at* resseyue thair bi such justice as thai desire thaim self. Now as me semyth it is shewid openly ynough, whi on kynge reignith vpon is peple **dominio tantum regali**, and that other reignith **dominio politico et regali**; ffor that on kyngdome be ganne of and bi the might of the prince, and that o*per* be ganne bi the desire and institucion of the peple of the same prince.

CHAPTER III.

HERE BIEN SHEWED THE FRUYTES OF JUS REGALE AND THE FRUYTES OF JUS POLITICUM ET REGALE.

And how so be it that þe Ffrenche kyng*e* reignith vppon is peple **dominio regali**, yet Seynt Lowes some tyme kyng*e* ther, nor eny of his p*ro*genitors sette neu*er* tayles or o*per* imposicion vppon the peple of þ*at* lande with owt the assent of þe iij estates, wich whan thai bith assembled bith like to the courte of the p*ar*lement in Ingelonde. And this ordre kepte many of his successours in to late day*is*, that Ingelonde men made suche warre in Ffraunce, that the iij estates durst not come to gedre. And than for

that cause and for gret necessite wich the Ffrench kyng*e* hade of goode for the defence of þ*a*t lande, he toke vpon hy*m* to sett tayles and o*þer* imposicions vpon the co*m*mons w*ith* owt the assent of the iij estates; but yet he wolde not sett any such charges, nor hath sette, vp*p*on the nobles for fere of rebillion. And bi cause the co*m*mons þ*er*, though thai haue grucched, haue not rebellid or beth hardy to rebelle, the Ffrench kyng*es* haue yerely sithyn sette such charges vpon them, and so augmented the same charges, as the same co*m*mons be so impou*er*ysshid and distroyed, þ*a*t thai mowe vnneth leve. Thai drinken water, thai eyten apples, w*ith* brede right browne made of rye; thai eyten no flesshe but yf it be right seldon a litle larde, or of the entrales and heydes of bestis slayn for the nobles and marchaunt*es* of the lande. Thai weren no wolen, but yf it be a pou*er*e cote vndir thair vttermest garnement, made of grete ca*u*nuas, and callid a frokke. Thair hausyn beth of lyke ca*u*nuas, and passyn not thair kne, wher fore thai beth gartered and ther theis bare. Thair wyfes and childeren gone bare fote; thai mowe in non o*þer* wyse leve. For so*m*me of thaim þ*a*t were wont to pay to his lorde for his tenem*e*nt, wich he hiryth by the yere, a scute, payith nowe to the kyng*e* ou*er* þ*a*t scute .v. scutes. Wher thurgh thai be arted bi necessite so to wacch, labour, and grubbe in the ground for thair susten*a*nce, that thair nature is wasted, and the kynde of hem broght to noght. Thai gon crokyd, and ben feble, not able to fight, nor to defende þe realme; nor thai haue wepen, nor money to bie thaim wepen w*ith* all. But verely thai liven in the most extreme pou*er*tie and mis*er*ie, and yet dwellyn thai in on the most fertile reaume of the

worlde. Werthurgh the Ffrench kynge hath not men of his owne reaume able to defende it, except his nobles, wich beyren non such imposicions, and ther fore thai ben right likely of thair bodies; bi wich cause the said kynge is compellid to make his armeys and retenues for the defence of his lande of straungers, as Scottes, Spaynardes, Arrogoners, men of Almeyn, and of oþer nacions, or ellis all his enymes myght ouerrenne hym; for he hath no defence of his owne except is castels and fortresses. Lo this is the frute of his Jus regale. Yf the reaume of Englonde, wich is an Ile, and therfor mey not lyghtly geyte soucore of other landes, were rulid vndir such a lawe, and vndir such a prince, it wolde be than a pray to all oþer nacions þat wolde conqwer, robbe, or deuouir it; wich was well provid in the tyme of the Bretons, when the Scottes and the Pyctes so bete and oppressid this lande, þat the peple therof sought helpe of the Romayns, to whom thai hade be tributori. And when thai coude not be defende be thaym, thai sought helpe of the Duke of Bretayn tho called litle Bretayn, and grauntid therfore to make his brother Costantyne þer kynge. And so he was made kynge here, and reigned many yeres, and his childirren aftir hym, of wich gret Artour was one of thair issue. But blessyd be God, this lande is rulid vndir a bettir lawe; and therfore the peple therof be not in such peynurie, nor therby hurt in thair persons, but thai bith welthe, and haue all thinges nescessarie to the sustenance of nature. Wherfore thai ben myghty, and able to resiste the aduersaries of this reaume, and to beete oþer reaumes that do, or wolde do them wronge. Lo this is the fruyt of Jus pollíticum et regale, vndre wich we live.

Sumwhat now I haue shewid the frutes of both lawes, ut ex fructibus eorum cognoscetis eos.

CHAPTER IV.

HERE IS SHEWED HOW THE REUENUES OF FFRAUNCE BYN MADE GRETE.

Sithyn our kynge reignith vpon vs be lawes more fauerable and good to vs, þan be the lawes by the whiche þe Ffrench kynge rulith his peple, hit is reason þat we be to hym more good and more profitable than be the sugettes of the Ffrench kynge vnto hym; wich it wolde seme that we be not, considerynge þat his subiectes yelden to hym more in a yere, than we do to owre soferayn lorde in ij yeres, how so be it þat thai do so ayenst thar willes. Neuer the lesse when it is considerid, how a kynges office stondith in ij thynges, on to defende his reaume ayen þair enemyes outwarde bi the swerde; an other that he defende his peple ayenst wronge doers inwarde bi justice, as hit apperith bi the said first boke of kynges; wich þe Ffrench kynge dothe not, though he kepe Justice be twene subiet and subget; sithin he oppressith thaim more hym self, than wolde haue done all the wronge doers of þe reaume, þough thai hade no kynge. And sithyn it is a synne to gyve no meyte, drynke, clothynge or other almes to hem that haue nede, as shal be declared in the day off dome; how muche a greter

synne is it to take from the pore man is meyte, is drinke, his clothynge, and all that he hath nede off. Wich werely doth the Ffrench kynge to mony a thowsande of his subiectes, as it is be fore openly declared. Wich thynge þough it be nowe colourid per jus regale, yet it is tyranne. Ffor, as Seynt Thomas saith, whan a kynge rulith his reaume only to his owne profite, and not to the good off is subiectes, he is a tyrant. Kynge Heroude reignid vppon þe Jues dominio regali; yet when he slowe the childeren off Israell, he was in that a tyrant, though the lawes seen, quod principi placuit, legis habet bigorem. Wherfore Acab, wich reigned vppon the childeren of Israell bi like lawe, and desired to haue hade Nabothe his subgectes vyne yerde, wolde not by that lawe take it ffrom hym, but proferid hym the value thereof. Ffor theys wordes seid to the profete, predic eis jus regis, beth not ellis to say but, predic eis potestatem regis. Wher fore as ofte as such a kynge dothe any thynge ayenst the lawe of God, or ayenst þe lawe off nature, he dothe wronge, not with stondynge the said lawe declared by the prophete. And it is so, that the lawe off nature woll in this case, þat the kynge shulde do to his subgettes, has he wolde ben done to hym self, yff he were a subget; wich mey not be that he wolde be almost distroied as bith þe commons off Ffraunce. Wherfore, al be it that the Ffrench kynges reuenues ben by suche meanes moche gratter than be the revenues wich þe kynge owre souerayn lorde hath off vs, yet thai ben not goodly taken, and the myght of his reaume is nerehande distroyed ther by. By wich consideracion I wolde nat that the kynges revenues of this reaume were made grette by any

such meane. And yet of necessite thai muste be gratter than thai bith at this day. And trewly it is veray necessarie that thay be alwey grete; and that the kynge haue habundantly wherewith his estate mey be honorably kepte ffor ryght mony causes, off wech some shall nowe be remenbred.

CHAPTER V.

THE HARME THAT COMYTH OFF A KYNGES POVERTE.

FFIRST, yff a kynge be pore, he shall bi nescessite make his expences, and by all þat is necessarie to his estate, by creaunce and borowynge; wher through his creauncers wolle wynne vpon hym the iiijth or the vth pene of all that he dispendith. And so he shall lese whan he payith, the iiijth or the vth pene of his revenues, and thus be ther by alway porer and porer, as vser and chevisaunce encressith the pou*er*te off hym that borowith. His creauncers shul alway grucche ffor lake of thair paymente, and defame his highnes off mysgou*er*nance, and defaute of kepynge of days; wich yf he kepe, he most borowe also much at the day*is*, as he didd firste; ffor he shalbe than pou*er*er than he was by the value of the iiijth or vth p*ar*te of his first expences, and so be alway pou*er*er and pou*er*er, vnto the tyme he be the pou*er*est lorde of his lande. Ffor such man*er* of borowynge makith the grete lordis to

be pouerer than thair tenantes. What dishonour is this, and abatynge of the glorie of a kynge. But yet it is most to his vnsuyrte. For his subgettes woll rather goo with a lorde þat is riche, and mey pay thair wages and expenses, then with thair kynge þat hath noght in his purse, but thai most serue hym, yf thai wil do so, at thair owne dispenses. Item, yf the kynge be pouere, he shall of necessite make his giftes and rewardes by asseignementes, for wich he shall haue but litle thanke. For the pouere man hade leuer an c. marke in hande, then an c. ti. bi asseignement, wich perauentur shall cost hym right miche or he can gete his payment, and perauentur be neuer paid therof. And often tymes for lake of money the kynge shall be fayne to gyf awey his lande to such as wolde haue ben feyner of a c. ti in hand, than of xl. ti worth lande yerely, to the grete abatynge of his revenues and depopolacion of his reaume. But the grettest harme that comyth of a kynges pouerte is, that he shal bi necessite be arted to fynde exquysite meanes of geytinge of good; as to putt defaute in some of his subgettes þat bith innocentes, and vpon the riche men more þen the pore, by cause that he mey bettir pay; and to shew rigoure þer as fauour awght to be shewid, and fauour þer as rigour shuld be shewid, to perversion of Justice, and perturbacion of the peas and quiete of the reaume. For, as the philosepher saith in his Eytikes, Impossibile est indigentem operari bona. Hit nedith not now to specifie mo of the harmes wich comyth to a reaume bi the pouerte of þer kynge, how be it thai bith mony mo than we haue shewid yet; for euery wise man mey se ham openly i now. But we most holde it for vndouted, þat ther

mey no reaume prospere, or be worshipfull, vndir a poure kynge.

CHAPTER VI.

ORDINANCE FFOR THE KYNGES ORDINARIE CHARGES.

And sithyn it is necessarie that the kynge be alway riche, wich may not be with owt he haue revenues sufficiant for the yerely mayntenance of his estate; it is behouefull that we furst esteme, what his erly charges and expences bith likely to drawe vnto. Ffor aftir that nedith his reuenues to be proporcioned; but yet thai nedun to be gretter than woll be the charges, for doute of soden cases, wich mey falle to hym and to his reaume. Ffor Seynt Bernarde saith, þat yf a mannes expenses be egall to his livelode, a soden chaunce mey distroye his estate. The kynges yerely expenses stonden in charges ordinarie, and in charges extra ordinarie. His charges ordinary mey not be eschewed, and therfore it nedith þat therbe lyvelode asseigned ffor the payment therof; wich lyvelode be in no wyse putte to no other vse. And yff it happen that any patent be made of any parte therof to oþer vse, þat thanne þat patent be voide and of non effect. Wich thynge yff hit be ffermely estableshed, the kynges ordinarie charges mey alway be paid in hande, and the pro vision ffor hem mey alway be made in seson; wich shalbe worth to the kynge the

iiijth or the vth parte of the quantite of his expenses for ordinarie charges. This may in nothinge restrane the kyngis pover. Ffor it is no poiar to mowe aliene and put away; but it is power to mowe haue and kepe to hym self. As it is no poiar to mowe synne, and to do ylle, or to mowe to be seke, wex olde, or that a man may hurte hym self. Ffor all thes poiars comen of impotencie. And therfore thay mey p*ro*perly by callid nown poiars. Wherfore the holy sprites and angels, þ*at* mey not synne, wex old, be seke, or hurte ham selff, haue more poiar than we, that mey harme owre selff w*ith* all thes defautes. So is the kynges power more, in that he may not put ffrom hym possescions necessaries for his owne susten*a*nce, than yff he myght put ham ffrom hym, and aliene the same to his owne hurte and harme. Nor this is ayen the kyng*es* p*re*rogatiff, be wich he is exaltid above his subgett*es*; but rather this is to hym a p*re*rogatiff. Ffor no man saue he mey haue ayen the lande þ*at* he hath on*is* aliened. This livelode asseigned ffor the ordinarie charges shall aftirwarde be neu*er* askid off the kyng, nor his highnes shall thynke ffor þ*at*, that he hath þe more livelode to be given awey; but be reaso*n* hereoff he will þe more restrayn his yeftis off o*per* off his livelod, co*n*siderynge þ*at* than it woll not be grette, and therfore he shall haue more nede off it then thai that will aske it. The ordenarie charges, wich þe writer hereoff can nowe remenbr, be thies; the kyng*es* housholde, his warderobe. And how so be it þ*at* the kyng*e* liste now, or will hereaftir, make his howshold lesse than it was wonned to be; yet his highnes shall þa*n* haue therfore a bouute his p*er*sone, ffor his honour and suyrte, lordes, knyghtes,

and sqviers, and oþer, in also grete nombr, or gretter than his howsolde was wonned to be, to his charges peraduentur also gretly, as his houshold well ruled was wonned to stonde hym inne. Wher fore hereinne it nedith not to considre or to purvey, but only ffor the kynges house, wich he may resume or chaunge in to his new maner, or other fourme at his pleasur, and as it shalbe thought aftir the seasons most expedient. The expenses off wich housholde mey sone be estemed by the wich off olde tyme haue be officers therin, and bi the clerkys off theschekquer. The secounde ordinarie charge is the payment off the wages and ffees off the kynges grete officers, his courtes, and his counsell. Wich charge woll alwey be grete, and thies men nedun to be alway redely payid. Ffor indigens in ham is not only vnworshipfull, but it mey do the most harme þat mey falle of eny nede in any estate of the lande, aftir the kynges most grete estate. Þe thirde charge ordinarie is the payment of the kepyng of the marches, wher in we beyre moch gretter charges yerely than done the Scottis, wich often tymes is for the ffauour þat we do to the persones þat kepe ham, wich ffauoure þe Scottis do not. The iiijth charge is the kepyng off Caleis, wich charge is welynoghe knowen. Þe vth charge is ffor the kynges werkes, off wich þe yerely expenses mey not be estemede, but yet þe accoumptes off the clerkes off the werkes wollyn shewe þe likenes þeroff, wile þe kynge makith no new werkes. The kepynge off the see I reken not amonge the ordinarie charges, how be it the charge þeroff is yerely borne, bi cause it is not estimable, and the kynge hath therfore þe subsidie off pondage and tonnage. Nor the lesse

be that reason pondage and tonnage mey not be rekenned as p*ar*cell off the revenues wich the kynge hath ffor the mayntenance off his estate, bi cause it aught to be applied only to þe kepynge off the see. And though we haue not alwey werre vppon the see, yet it shalbe nescessarie þ*at* the kyng*e* haue alway some ffloute apon the see, ffor the repressyng*e* off rovers, sauyng*e* off owre marcha*untes*, owre ffishers, and the dwellers vppon owre costes; and þ*at* the kynge kepe alway some grete and myghty vessels, ffor the brekynge off an armye when any shall be made ayen hym apon þe see. Ffor thanne it shall be to late to do make such vessailles. And yet w*ith* owt thaym all the kyng*es* navey shallnot suffice to borde with carrikkes and o*þer* grete vessailles, nor yet to mowe breke a myghty ffloute gadered off purpose. Now, as I suppose, we haue rekened þe grettest parte off the kyng*es* ordinarie charges. Wherfore we woll considre next his extra ordinarie charges, also ferre as mey be possible to vs.

CHAPTER VII.

THE KYNGES EXTRAORDINARIE CHARGES.

The kyng*es* ext*ra*ordinarie charges bith so casuelle, þ*at* no ma*n* mey knowe hem in certaynte. But yet he may esteme what som*me* thai bith not like to excede, but yff þ*er* ffall a case ou*er* moch exorbitant;

and than it shalbe reasone, and also necessarie, þat all the reaume beyre ffor þat case a synguler charge. Such off the said extraordinarie charges as the writer hereoff can now remenbr be theis. Ffirst þe kyng shall often tymes sende owt off this lande his ambassatours, as well to the pope, as to diuerse kynges, prynces, and nacions; and oþer while he shall sende his procuratours and messengers to the counselles generalles. Wich ambassatours, procuratours, and messengers shall nede to be honerably accompanyed, and well be sene, alsowell ffor the worshippe off þe reaume, as ffor the avaunsynge off þe maters ffor wich thai shalbe sende, to þe kynges right grete charge, wich shalbe more or lesse, aftir thair longe or shorte demure in thair viage. Item, the kynge shall beyre yerely charges vnknowen in receyvinge off ligates and messengers sende ffrom the pope, and off ambassatours sende ffrom kynges and oþer princes, and also ffrom grete communalties bi yonde þe see, wich will putt þe kyng to grete expenses while thai bith here, and at thair departynge thai most nedis haue grete giftes and rewardes; ffor þat be sitith þe kynges magnificence and liberalite, also it is necessarie ffor the worship off his reaume. Item, sithen it is not gode þat he rewarde such as do, and shall do to hym seruice, or oþer maner off pleasures, with þe possescions and revenues of his crovne, nor with other possescions off his inheritance;—ffor thai be moch more necessarie for the sustenance off his grete estate;—hit shall therfore be necessarie, þat the kynge make such rewardes with money owt off his cofers, and þat somme off hem haue so largely þerôff, as thai mey bie thaim lande with all, yff thai will. Ffor be this meane þe

kynges estate shall alwey be kept vnblemyshed. And off somme man is highnes shall haue more thanke ffor money then ffor lande; and also money is the most convenient rewarde to hym þat hath not longe serued. This charge woll all wey be grete, and so inestimable grete, þat in somme yere a grete lordes lyvelod shalnot suffice to beyre it, though he wolde selle grete parte þerof. And trewly, when þe kyng rewardith is servantes in this maner, he shewith grete ffauour to all his reaume. Item, it shall nede þat the kyng haue such tresour, as he mey make new bildynges whan he woll, ffor his pleasure and magnificence; and as he mey bie hym riche clothes, riche furres, oþer than be wonned to fall vndre þe yerely charges off his warderober, rich stones, serpes, bauderikes, and oþer juels and ornamentes conuenyent to his estate roiall. And often tymes he woll bie riche hangynges and other apparell ffor his howses; vessaill, vestmentes, and oþer ornamentes for his chapell; bie also horses off grete price, trappers, and do other suche nobell and grete costes, as bi sitith is roiall mageste, off wich it is not now possible to the writer hereof to remenbr the especialliteis. Ffor yff a kyng did not so, nor myght do, he lyved then not like his estate, but rather in miserie, and in more subgeccion than doth a priuate person. Item, the kynge shall often tymes sende his comissioners in gret myght, and also his juges, to represse and punysh riatours and risers; ffor wich cause he shall odre whiles ride in his owne person myghtely accompanyed. Wich thynge wolnot be done with owt grete costes; ffor no man is bounde to serue hym in suche cases at his owne dyspenses. Item, yff ther come a sodayne armye vpon this londe by see

or by lande, þe kyng most encomptre them *with* a lyke armye, or a gretter; ffor þe expenses wheroff he shall not so sadanly haue any eyde off his peple. Wherfore he most than do the expences *with* money owt off his cofers, or put all is lande in jopardie. Loo now we haue remenbred grete parte off the kynge*s* ext*ra*ordinarie charges; and be ffore we haue shewid grete p*ar*te off his ordinarie charges. Wherfore now it is tyme þ*at* it be shewid, how the kynge mey haue revenues and livelode sufficient to beyre theis ij charges.

CHAPTER VIII.

YFF THE KYNGES LIVELODE SUFFICE NOT, HIS SUBGETTES AUGHT TO MAKE HIT SUFFICIENT.

Hit is shewid be ffore, how necessarie it is þ*at* livelod sufficient be asseigned ffor the kynges ordinarie charges, and that the same livelod be only applied therto, and not aliened in tyme comynge. Ffor that asseignem*en*t mey in no wise hurte þe kyng, considerynge þ*at* yff any parte off þe revenues þ*er*off remayne ou*er* the paiem*en*t of the same ordynarie chargis, that so remaynynge is the kynge*s* owne money, wich he mey than imploye to o*þer* vse at is owne pleasur. And it is vndouted that the kynge hath livelode sufficient wich mey be soo asseigned for his ordinarie charges. Wherfore we haue now no thyng ellis to be sercched, but what lyvelod þe kyng hath ffor the payment off his charges extraordinarie, ou*er* so moche livelod as shalbe asseigned

ffor his charges ordinarie; and yff he haue not livelod sufficient þerto, how than his livelod mey be made sufficient. Ffor his reaume is bounde by right to susteyne hym in euery thyng necessarie to his estate. Ffor, as Seynt Thomas saith, **Rex datur propter regnum, et non regnum propter regem.** Wherfore all that he dothe owith to be referred to his kyngdome. Ffor though his estate be þe highest estate temporall in þe erthe, yet it is an office, in wich he mynestrith to his reaume defence and justice. And therfore he mey say off hym selff and off his reaume, as the pope saith off hym selff and off the churche, in þat he writithe, **seruus seruorum Dei.** By wich reason, ryght as euery seruant owith to haue is sustenance off hym þat he serueth, so aught þe pope to be susteyned by the chirche, and the kyng by his reaume. Ffor **nemo debet propriis expensis militare.** And owre lorde saith, **dignus est operarius cibo suo.** Wherfore þe appostill saith, **communicet is qui catezizatur verbo, ei qui se catezizat, in omnibus bonis.** Wherfore sithen euery reaume is bounde to susteyn is kyng, yet moch more be we bounde ther to, vppon whom owre kyng reignith by so ffauerable lawes as is beffore declared.

CHAPTER IX.

HERE HE SHEWITH THE PERELLIS THAT MEY COME TO THE KYNG BY OUER MYGHTYE SUBGETTES.

But sithyn the said extraordinarie charges bith so vncertayne þat thai be not estymable, hit is not

possible to putt in certayne, what lyvelod will yerely suffice to beyre ham. Wherfore we nede in this case to vse coniecture and ymaginacion, as to thynk that þer is no lordis livelod in Englond sufficient to beyre the kynges extraordinare charges. Then nedith it þat the kynges livelod, aboff such reuenues as shalbe asseigned for his ordinare charges, be gretter than the livelod off the grettest lorde in Englande. And peraventure, whan livelod sufficient ffor the kynges ordinarie charges is lemitted and asseigned therto, hit shall apere, that diuerse lordis off Englande haue also moch livelode off thair owne, as than shall remayne in the kynges handes ffor his extraordinarie charges; wich were inconvenient, and wold be to the kynge right dredefull. For than such a lord mey dispende more then the kynge, consideringe þat he is charged with no such charges extraordinarie or ordinarie as is the kyng, except an houshold, wich is but litle in comparison off the kynges house. Wherfore yff it be thus, it shalbe necessarie, þat ther be purveyid ffor the kyng moch gretter livelod than he hath yet. For manis corage is so noble, þat naturally he aspirith to high thinges, and to be exaltid, and þerfore enforsith hym selff to be alway gretter and gretter. Ffor wych the philosopher saith, omnia amamus sed principari maius. Wherof it hath comyn þat oftyn tymes, when a subget hath hade also gret livelod as his prince, he hath anon aspired to þe estate of his prince, wich by such a man mey sone be gote. Ffor the remenante off the subgettes off such a prince, seyng þat yff so myghty a subget myght opteyne þe estate off thair prince, thai shulde than be vndir a prince double so myghty as was thair old prince;—wich encrease any subget

desirith, ffor his owne discharge off þat he beyrith to the sustenance off his prince;—and therfore wolbe right gladde to help such a subgett in his rebillion. And also such an enterprise is the more ffeseable, when such a rebell hath more riches than his souerayne lorde. Ffor the peple will go with hym þat best mey susteyne and rewarde ham. This maner off doynge hath be so ofte practised nerehande in euery reaume, þat thair cronicles be full off it. In the reaume off Ffraunce was neuer chaunge off thair kynge, sithyn it was ffirst inabyted by Ffrench men, but by þe rebillion off such myghty subgettes; as Hyldericus kyng off Ffraunce, dissended off Clodone, wich was ffirst Cristen kyng off Ffraunce, was putt doune by Pepyne son to Carollus Marcellus, wich was the most myghty subget þat into that tyme was euer sene in þe reaume off Ffraunce. And aftirwarde Charles, discended off Carolus Magnus, sonne to the said Pepyne by ix. or by x. generacions, was put ffrom the kyngdome of Ffraunce by Hugh Capite, sonne to Hugo Magnus, Erle of Paris, wich tho was the myghtieste subgett off Ffraunce, and therfore create and callid Dux Ffranciæ. And in owre dayis we haue sene a subgett off the Ffrench kynges in such myght, þat he hath gyven bataill to the same kyng, and putt hym to flight, and aftirwad besegett hym beyng in Paris is grettest cete, and soo keppid thair, vnto þe tyme his said kyng hade made such ende with hym, his adherentes, and fauctours, as he desired. We haue also sene late in owre reaume, somme off the kynges subgettes gyff hym bataill, by occasion þat thair livelod and offices were þe grettest off þe lande, and ellis thai wolde not haue done soo.

The Erlis of Lecestir and Glocestre, wich were þe

grettest lord*es* off Englond, rose ayenest thair kynge Herre the iij^de^, and toke hym and his sonne p*ri*soners in the ffelde. Wich man*er* off demeyny*nge* the kyng off Scott*is* þ*at* last dyed dredyng to be practysed in his lande, putt owt off the same lande þe Erle Douglas whos livelod and myght was nere hande equivalent to his owne, moved þ*er*to be no other cause, saue only drede off his rebyllion. The cronycles off eu*er*y reaume, and in especiall off Spayne and Denmarke, bith full off such ensamples; and so bith also the bokis off kyng*es* in holy scripture; wherfore it nedith not to write mor herein. And also it mey not be eschewid, but þ*at* the grete lordis off þe lande by reason off nev dissent*es* ffallyng vnto ham, by reason also off mariages, purchasses, and o þ*er* titles, shall often tymes growe to be gret*ter* than thai be now, and p*er*auent*ur* som*m*e off hem to be off livelod and poiar like a kyng; wich shalbe right god ffor the lande while thai aspire to non hygher estate. Ffor such was þe Duke of Lancastre, þ*at* warred þe kynge off Spayne, on off the myghtiest kynges off Cristendome, in his owne reaume. But this is writun only to the entent þ*at* it be well vnderstande, how necessarie it is þ*at* the kynge haue grete possescions, and peculier livelod ffor his owne suirte; namely, whan any of his lordis shull happen to be so excessyuely grete, as ther mought therby groue p*er*ell to his estate. For certanly ther mey no grettir p*er*ell growe to a prince, than to haue a subgett equepolent to hym selff.

CHAPTER X.

HOW THAT THE CROVNE IS BESTE TO BE INDOWED.

Now that the lykennes off the kynges charges ordinarie and extraordinarie bith shewid, and ouer that, how necessarie it is that he haue grete livelod aboff þe same charges, in wich it nedyth þat he excede gretly euery man off the lande, wych livelod vndoutedly he hath not at þis day; hyt is therfore byhouefull þat we now serch how the kyng mey haue such livelod; but ffirst, off what comodites it mey best be take. The kyng off Ffraunce myght not sumtyme dyspende off his demaynes, as in lordeshippes, and oþer patrimonie peculier, so mich as myght tho the kynge off England; wich mey well appere be that the qwene off Ffraunce hath but v. M marke yerely to huyr douer, wher as the qwene off Englond hath x. M marke. Ffor in tho dayis ther was but litle more off the reaume off Ffraunce in the kynges handes, but þat parte wich is callyd the Ile off Ffraunce. Ffor all the remenant off the reaume as Burgonye, Normandye, Guyne, Champayne, Langdoke, and Fflaunders, with mony oþer such grete lordshippes, were than in the handes off the Dussepers, and off oþer princes and grete lordis. Ffor wych cause the gabell off the salt, and the quaterimes of the wynes were graunted to the kynge by the iij estates off Ffraunce, wych was no litill subsidie. Ffor ther is no man in Ffraunce þat mey eyte salt, but yff he bie it off the kyng; and that is now sett to so grete prise, þat the bushell, wich the

kyng bieth ffor iij^{d} or iiij^{d}, is solde to his peple ffor ij^{s} and a j^{d}, and other while more. And the iiijth pype off the wynes that be made in Ffraunce mey be no lityll thyng, sithyn the tyllyng off the vynes is the grettest comodite off the reame; but þat comodite we haue not in this lande. Wher fore ther is no p*ar*te off tho man*er*s off subsidie þat myght be gode ffor owre sou*er*ane lorde, but yff it were that he myght sell to his subgett*es* the salte þat comyth hyder. In wich thyng*e* he shall haue more grochyn*g*e off the peple than p*r*offett. Ffor in Ffraunce the peple salten but lytill mete, except thair bacon, for thai wolde bie litil salte; but yet thai be arted to bye more salte than thai wolde. Ffor the kyng*es* officers bryngen to thair houses eu*er*y yere, also moche salte as by thair co*n*iecture is ressnable to the nombre off þe men, wome*n*, and childeren that dwellen therin, ffor wich thai shall pay though thai wolnot haue so muche. This rule wolde be sore aborred in Englond, as well by the march*a*unts þat bithe wonned to haue thair ffredome in biyng*e* and sellyng*e* off salte, as by the peple þat vsen moche to salte thair meyt*es* more than do þe Ffrenchmen; by occasion wheroff thai woll than at eu*er*y mele groche w*ith* the kynge, þat entreteth hem more rygoursly than his p*r*ogenitors haue done. And so his hyghnes shall haue þ*er*off, but as hadd þe man þat sherid is hogge, muche crye and litil woll. In Fflaunders, and in oþ*er* lordeshipp*es* off the Dukes off Burgoigne downewarde, he takith c*er*tayn imposicions made by hym selff vppon eu*er*y oxe, eu*er*y shepe, and vppon oþ*er* thyng*es* solde; and also vppon eu*er*y vesaill off wyne, eu*er*y barrell off bere, and oþ*er* vitalles solde in his lordeshippes, wich is no litil revenue to hym;

but yet he dothe it maugre the peple, wich God defende þat the kynge oure souerayn lorde shulde do vppon is peple, with owt thair grauntes or assent. Nertheles with thair assent suche maner off subsidie, yff þer couude not be ffounde a better meane off þe encressynge off the kynges revenues, were not vnresnoble. Ffor therin and in the gabell off þe salte, euery man shalbeyre þe charge þeroff eyegally. But yet I wolde not þat suche a newe charge were put apon þe peple in owre souerayn lordis dayis, with wich is progenitours charged hem neuer, yff a better remedie coude be ffounde. Kynge Salamon charged is peple with gretter ymposicions than thai were wonned to beyre be ffore his dayis. And by cause his sonne kynge Roboham wolde not ease hem theroff, the x. parties off the peple, devided in xii. parties, de partide ffrom hym, and chese hem a new kynge, and come neuer aftir þat tyme vndre is subiection. Off wiche departyng God said hym selff aftirwarde, a me factum est istud. Wiche is an ensample þat it is not good a kynge to ouer sore charge his peple. Wherfore me thinkith, þat yff þe kynge myght haue is livelod ffor the sustenance off his estate in grete lordshippes, maneres, ffee ffermys, and such other demaynes, his people not charged, he shulde kepe to hym hollych thair hertes, excede in lordshippes all the lordes off his reaume, and ther shulde non off hem growe to be like vnto hym, wich thynge is most to be fered off all þe worlde. Ffor then with in ffewe yeres þer shulde not remeyne lordeshippes in is reaume, by wich þai myght growe so grette. Ner thai myght growe soche be mariages, but yff the kyng wolde hit. Ffor to hym fallen all þe grete mariages off his lande, wich he mey dispose

as hym liste. And by discente þer is not like to ffalle gretter heritage to any man than to þe kyng. Ffor to hym bith cosens þe most and grettest lordes off þe reaume. And by escheittes þer mey not so muche lande fall to any man as to þe kyng, by cause þat no man hath so many tenantes as he; and also no man mey haue the escheittes off treson but hym selff. And be purchas, yff this be done, þer shall no man so well encresse his livelod as the kyng. Ffor ther shall non off his tenantes aliene livelod with owt is licence, wheryn he mey best preferre hym selff. Nor þer shall no livelod be kept so holl as þe kynges, consideryng þat he mey not onestly selle is lande, as oþer men mey doo; and also his sellyng wolde be the hurte off all his reaume. Soche was þe sellynge off Chirke and Chirkes landes, weroff neuer manne see a president, and God defende that any man see mo soche hereaftir. Ffor sellynge off a kynges livelod is propirly callid delapidacion off his crowne, and therfore is off gret infame. Now we haue ffounde vndoutably, what maner revenuez is best ffor the indowment off the crowne. But sithyn it is said before, þat the kyng hath not at this day sufficiant therto, it is most convenient that we nowe serch, how is hyghnes mey haue sufficiant off suche revenues, wich we ffounde now best therfore.

CHAPTER XI.

HERE IS SHEWID, WHAT OFF THE KYNGES LIVELOD GEVEN AWEY, MEY BESTE BE TAKEN A GEYN.

THE holy patriarke Joseph, while he, vndr Pharaho kyng, gouerned þe lande off Egipte, rulid and so entredid þe peple þeroff, þat thai graunted to pay, and paid to the same kynge, the vth parte of thair graynes, and off all oþer thynge that growed to thaim yerely off þe erthe; wich charge thai berun yet, and euer shall beyre. Wherthro thair prince, wich now is the Saudayn off Babilon, is on off the myghtyest princes off þe worlde; and that notwithstondynge þe same Egipciens bith the most riche commons þat liven vndre any prince. Wherby we bith lerned þat it shalnot only be goode to owre prince, but also to vs selff, that he be well indowed; ffor ellis the patriarke wolde not haue made such a trety. The Ffrench kyng in on thynge, þat is to say in wyne, takyth more off is peple than dothe þe Saudan; ffor he takith þe iiijth peyne þeroff. But yet he takith no thynge off thair graynes, wolles, or off any other gode þat growith to hem off thair lande. The kynge owre souerayn lorde hade be tymes, sithen he reigned vpon vs, livelod in lordshippes, landes, tenementes, and rentes, nerehand to the value off þe vth parte off is reaume, aboff the possescions off þe chirche. Off wich livelod, yff hit hade abiden still in his handes, he hade ben more myghty in good revenues than any off þe said ij kynges, or any kyng þat now reigneth vppon cristen

men. But this was not possible to haue ben done. Ffor to some parte þeroff the eyres off thaim þat some tyme owed it be restored; some bi reason off tayles, some bi reason off oþer titles, wich the kyng hath considered and thought hem good and resonable. And some off þe said livelod is god grase hath geuen to such as haue serued hym so notably, þat as thair renoumne wolbe eternall, so it be sate the kynges magnyficence to make thair rewardes euerlastynge in their heyres, to thair perpetuall memorie and honour. And also the kyng hath geven parte off this livelod to his moste worshipfull brotherryn, wich not only haue serued hym in the maner ffor said, but bith also so nygh in blode to his highnes, that it be satte not is magnificence to haue done in oþer wyse. Neuerthelesse somme men haue done hym seruice, ffor wych it was resonable þat his grase hade rewarded hem; and ffor lakke off money, the kyng than rewarded þam with lande. And to some men he hath done in lyke wyse aboff thair merites, through ymportunite off thair suyttes. And it is supposed þat some off hem haue goton an c. ℔i. worth lande, þat wolde haue holde hym content with cc. ℔i. in money, yff thai myght haue hade it in hande. Wherfore it is thought, þat yff suche gyftis, and namely tho wich haue be made inconsideratle, or aboff the merytes off hem that haue thaim, were refourmed; and thai rewarded with money, or offices, and some with livelode terme off lyff, wich aftir thair dethis wolde than retorne to the Crowne, þe kyng shulde haue suche livelod as we now seke ffor, sufficiante ffor the mayntennance off his estate. And yff it wolde not than be so gret, I holde it for

vndouted, þat the people off his lande woll be well wyllunge to graunte hym a subsidie, vppon suche comodites off his reaume as bith be ffore specified, as shall accomplishe that wich shall lakke hym off such livelod; so that is highnes woll establyshe þe same livelod than remaynynge, to abide perpetuelly to his crowne, with owt translatynge þeroff to any oþer vse. Ffor ellis whan þat shall happen hereaftir to be gyven awey, it shall nede þat is commons be charged with a newe subsidie, and thus be kept alway in pouerte.

CHAPTER XII.

HERE IS SHEWID WHAT HARME WOLDE COME TO ENGLAND, YFF THE COMMONS THER OFF WERE POUERE.

Some men haue said þat it were good ffor the kyng, þat the commons off Englande were made pore, as be the commons off Ffraunce. Ffor than thai wolde not rebelle, as now thai done oftentymes; wich the commons off Ffraunce do not, nor mey doo; ffor thai haue no wepen, nor armour, nor good to bie it with all. To theis maner off men mey be said with the phylosopher, ad pauca respicientes de facili enunciant. This is to say, thai that see but ffew thynges, woll sone say thair advyses. Ffor soth theis ffolke consideren litill the good off the reaume off Englond, wheroff the myght stondith most vppon archers, wich be no ryche men. And yff thai were made more pouere than thai be, thai shulde not

haue wherwith to bie hem bowes, arroes, jakkes, or any oþer armour off defence, wherby thai myght be able to resiste owre enymes, when thai liste to come vppon vs; wich thai mey do in euery side, considerynge þat we be a Ilelonde; and, as it is said before, we mey not sone haue soucour off any oþer reaume. Wherfore we shull be a pray to all owre enymyes, but yff we be myghty off owre selff, wich myght stondith most vppon owre pouere archers; and therfore thai nedun not only haue suche ablements as now is spoken off, but also thai nedun to be much excersised in shotynge, wich mey not be done with owt ryght grete expenses, as euery man experte þer in knowith ryght well. Wherfore þe makyng pouere of þe commons, wich is þe makyng pouere off owre archers, shalbe þe distruccion of the grettest myght off owre reaume. Item, yff pouere men mey not lightly rise, as is the openion of thes men, wich ffor þat cause wolde haue þe commons pouere; how than, yff a myghty man made a rysinge shulde he be repressed, whan all the commons ben so pouere, þat aftir such openyon thai mey not ffeght, and be þat reason not helpe the kyng with ffeghtynge? And whi makith the kynge þe commons euery yere to be mustered; sithen it were god thai hade non harnes nor were able to ffight? O, howe vnwyse is þe oppenyon off thes men; ffor it mey not be mayntened be any reason! Item, whan any rysinge hath be made in this londe be ffor theis dayis by commons, the pouerest men þeroff haue be þe grettest causers and doers ther in. And thryfty men haue ben loth therto, ffor drede off lesynge off thair gode. But yet oftentymes thai haue goo with thaym, through manasheynge þat

ell*is* the same pou*er*e men wolde haue toke thair godes, wher in it semyth þ*at* pou*er*te hath be þe holl cause off all suche rysyng*es*. The pou*er*e man hath be sturred þ*er*to be occasion off is pou*er*te, for to gete gode and þe riche men haue gone w*ith* hem, be cause thai wolde not be pou*er*e be lesynge off þ*er* gode. What than wolde ffall, yff all the commons were pou*er*e? Trewly it is lyke that this lande then shulde be like vnto þe reaume off Boeme, wher the commons ffor pou*er*te rose apon the nobles, and made all thair godis to be comune. Item, hit is the kyngis honour, and also is office, to make is reaume riche; and it is dishonour whan he hath but a pou*er*e reaume, off wich men woll say þ*at* he reigneth but vppon beggers. Yet it were moch gret*ter* dishonour, yff he ffounde is reaume riche, and then made it pou*er*e. And it were also gretly ayenest his co*n*ciens, þ*at* awght to defende hem and her god*is*, yff he toke ffro hem thair godis w*ith* owt lafull cause; ffrom the infame wheroff God defende owre kyng, and gyff hym grase to augmente is reaume in riches, welth, and pr*o*sperite, to his p*er*petuell laude and worship*pe*. Item, the reaume off Ffraunce giv*ith* neu*er* ffrely off thair owne gode will any subsidie to thair pr*in*ce, be cause þe commons þ*er*off be so pou*er*e, as thai meynot give any thyng off þair owne god*is*. And the kyng ther askith neu*er* subsidie off is nobles, ffor drede þ*at* yff he charged hem so, thai wolde co*n*fedre w*ith* þe commons, and p*er*auentu*r* putt hym doune. But owre commons be riche, and þ*er*fore thai give to thair kynge, at som*m*e tymes qui*n*simes and dessimes, and ofte tymes o þ*er* grete subsidies, as he hath nede ffor þe gode and defence off his reaume. How gret

a subsidie was it, when the reaume gaff to thair kyng a quinsime and a desime qui*n*queniale, and the ixth fflese off thair wolles, and also the ixth shefe off þ*er* graynes, ffor the t*er*me off v. yere. This myght thai not haue done, yff thai hade ben impou*er*shed be thair kyng, as be the commons off Ffraunce; nor such a graunte hath be made by any reaume off cristendome, off wich any cronicle makith mencion; nor non oþer mey or hath cause to do so. Ffor thai haue not so much ffredome in thair owne god*is*, nor be entreted by so ffau*er*able lawes as we be, except a ffewe regions be ffore specified. Item, we se dayly, how men þ*at* haue lost thair god*is*, and be ffallen into pou*er*te, be com*m*e anon robbers and theves; wich wolde not haue ben soche, yff pou*er*te hade not brought hem þ*er*to. Howe many a theff then were like to be in this lande, yff all the commons were pou*er*e. Þe grettest surete trewly, and also the most honour þ*at* mey come to the kynge is, þ*at* is reaume be riche in eu*er*y estate. Ffor nothyng mey make is people to arise, but lakke off gode, or lakke off justice. But yet sertanly when thay lakke gode thai woll aryse, sayng that thai lakke justice. Neu*er* þe les yff thai be not pou*er*e, thay will neuer aryse, but yff þ*er* p*r*ince so leve justice, that he give hym selff all to tyranne.

CHAPTER XIII.

ONLY LAK OFF HARTE AND COWARDISSE KEPEN THE FFRENCHEMEN FFRO RYSYNGE.

Pouerte is not the cause, whi the commons off Ffraunce rise not ayen thair souerayn lorde. Ffor þer were neuer people in þat lande more pouere, then were in owre tyme the commons off the contre off Caux, wich was tho almost diserte ffor lakke off tillers; as it now well apperith be the new husbondry þat is done þer, namely in grobbyng and stokkyng off treis, busses, and groves, growen whill we were ther lordes off the contray. And yet the said commons off Caux made a mervelous gret rysinge, and toke owre townis, castelles, and ffortresses, and slowe owre capitans and soudiours, at soche a tyme as we hade but ffewe men off werre lyinge in þat contray. Wich provith þat it is not pouerte þat kepith Ffrenchmen ffro rysinge, but it is cowardisse and lakke off hartes and corage, wich no Ffrenchman hath like vnto a Englysh man. It hath ben offten tymes sene in Englande, þat iij. or iiij. theves ffor pouerte haue sett apon vj or vij trewe men, and robbed hem all. But it hath not bene sene in Ffraunce, þat vj. or vij. theves haue be hardy to robbe iij. or iiij. trewe men. Wherfore it is right selde þat Ffrenchmen be hanged ffor robbery, ffor thai haue no hartes to do so terable an acte. Ther bith therfore mo men hanged in Englande in a yere ffor robbery and manslaughter, then þer be hanged in Ffraunce ffor such maner of crime in vij yeres.

Ther is no man hanged in Scotlande in vij yere to gedur ffor robbery. And yet thai ben often tymes hanged ffor larceny, and stelynge off good in the absence off þe owner þeroff. But þer hartes serue hem not to take a manys gode, while he is present, and woll defende it; wich maner off takynge is callid robbery. But þe Englysh man is off anoþer corage. Ffor yff he be pouere, and see another man havynge rychesse, wich mey be taken ffrom hym be myght, he will not spare to do so, but yff þat pouere man be right trewe. Wherfore it is not pouerte, but it is lakke off harte and cowardisse, that kepith the Ffrenchmen ffro rysynge.

CHAPTER XIV.

HERE HIT IS SHEWID, WHI IT NEDITH ÞAT THER BE A RESUMPCION, AND A GRAUNT OFF GODE MADE TO THE KYNGE.

This serche wich we nowe haue made, ffor to vnderstonde how harmefull it wolde be to the kynge, and to his reaume, yff his commons were pouere, hath be a digression ffrom the mater in wich we labour; þat is to say, ffor to vndirstonde howe the kyng mey best haue sufficient and perdurable livelod ffor the sustentacion off his estate. Wherfore it be houyth þat we nowe resorte to the poynte in wich we lafte, wich, as I remenbr, was this. We ffounde be grete causes, þat it was nedefull, þat all suche giftes

as haue be made off the kynges livelod inconsederatly, as not deserued, or aboff the meretes of hym þat haue getun hym, were refourmed; so as thai wich haue done any seruice, be not vnrewarded. Wich thynge, as me thynkith, mey not perfitly be done, with owt a generall resumpcion, made be auctorite off parlement; and þat ther be gyven to the kynge by the same auctorite, a grete subsidie, with wich is hyghnes, be þe advise off his counsell, mey rewarde tho þat haue deserued rewardes, and awght not þerfore to haue parte off his revenues, by wich is estate moste nedis be mayntened; or awght not haue so moch off þe revenues, as thai haue now, or not so grete astate in the same. Considerynge þat all such gyvinge awey off the kynges livelod is harmefull to all is legemen, wich shall þerby, as is be ffore shewid, be arted to a newe charge ffor þe sustenance off is estate. But yet, or any suche resumpcion be made, it shalbe gode þat a worshipfull and a notable counsell be stableshed, be the advise off wich all new gyftes and rewardes mey be modered and made, as yff no such gyftes or rewardes had be made be ffor this tyme. Provided alway, that no man be harmyd, be reason off such resumpcion, in the arrerages off such livelod as he shall þan haue, wich shall renne aftir þat resumpcion, and bi fore þe said new giftes and rewardes. And whan such a counsell is ffully create and estableshed, hit shalbe gode þat all supplicacions wich shalbe made to þe kynge ffor any gifte or rewarde, be sende to þe same counsell, and þer debatid and delibered; ffirst whether þe supliant haue deserued such rewarde as he askith; and yff he haue deserued hit, yet it nedith þat it be delibered, whether the kynge mey gyve such rewarde as he

askith off his revenues, savynge to hym selff sufficiant ffor the sustenance off his estate. Ffor ellis such giving were no vertu, but a spice of prodigalite, and as ffor so moch it were delapidacion off his crowne. Wherfore no priuat person woll, be reason off liberalite, or off rewarde, so abate is owne livelod, as he mey not kepe such estate as he did be ffore. And trewly it were bettir, þat a priuat person lakked is rewarde wich he hath well deserued, then that be his rewarde þe gode publike and all the lande were hurte. Wherfore to eschewe theis ij harmes, it mey then be advised be the counsell, how such a person mey be rewarded with office, money, mariage, ffraunches, priuelage, or such oþer thynge, off wich þe crowne hath grete riches. And verely yff this ordre be kept, the kynge shalnot be greved be importunite of suytours, nor thai shall be importunite or brocage optayne any vnresonable desires. O what qwiete shall growe to þe kyng by this ordre; and in what reste shall than his people lyff, hauynge no colour off grochynge with soche as shall be aboute is person, as thai were woned to haue, ffor þe gyvynge awey off his londe, and also ffor the myscounsellynge off hym in many oþer cases; nor off murmor ageynes the kynges person, ffor þe mysgouernance off his reaume! Ffor in this counsell mey be determynyd euery case off deficulte, or the kyng do any thyng þerin. And the wise man saith, **ubi multa consilia, ibi salus.** And trewly such a contenuall counsell mey wel be callid, **multa consilia**, ffor it is ofte, and euere day counsellith.

CHAPTER XV.

HOW THE KYNGES COUNSELL MEY BE CHOSEN AND ESTABLESHED.

THE kyngis counsell was wonned to be chosen off grete *pr*inces, and off the gretteste lordes off þe lande, both sp*irit*uelles and temp*or*ellis, and also off o*þer* men that were in grete auctorite and offices. Wich lordes and officers had nere hande also mony maters off thair owne to be treded in the counsell, as hade þe kynge. Wherthrough, when thai come to gedre, thai were so occupied w*ith* thair owne maters, and w*ith* the maters off thair kynne, s*er*u*ant*es, and ten*a*ntes, þ*a*t thai entendet but litle, and o*þer* while no thynge, to þe kyng*es* maters. And also þ*er* were but ffewe maters off the kyng*es*, but yff þe same maters toucheden also þe said counsellers, thair cosyns, þ*er* s*er*u*ant*es, ten*ant*es, or such o*þer* as thai owed ffauor vnto. And what lower man was þ*er* sytinge in þ*a*t counsell, þ*a*t durste say ayen the openyon off any off the grete lordis? And whi myght not then men make be meanes off corrupcion som*m*e off the s*er*u*ant*es and counsellers off som*m*e off the lordes to moue the lord*es* to p*ar*ciallite, and to make hem also ffauorable and p*ar*cial as were the same s*er*u*ant*es, or the p*ar*ties þ*a*t so moved hem? Then couude no mat*er* treted in the counsell be kept p*riv*e. Ffor the lordes oftentymes tolde ther owne counsellours and s*er*u*ant*es, that hade suyd to hem ffor tho maters, how thai had sped in ham, and who was ayen ham. How mey

þe kyng be counsellyd to restrayne gyvinge a wey off his londe, off gyvinge off offices, corodeis, or pencions off abbeyis, by suche grete lordes to oþer menys seruantes, sithyn thay most desire such giftes ffor thaim selff, and thair seruantes? Wich thynges considered, and also mony oþer wech shall be shewid hereaftir, hit is thought gode, that þe kynge had a counsell chosen and estableshed in the fourme that ffolowith, or in some oþer ffourme like þerto. Ffirst, þat ther were chosen xij spirituell men, and xij temporell men, off þe wysest and best disposed men þat can be ffounde in all the parties off this lande; and that thai be sworne to counsell the kynge aftir a ffourme to be devysed ffor þer owthe. And in especiall, þat thai shall take no ffee, nor clothynge, nor no rewardes off any man, except only off þe kynge; like as þe Justices off þe kynges benche, and off þe Common place be sworne, when thai take ther offices. And þat thes xxiiij. be alway counsellers, but yff þer be any defaute ffounde in hem, or þat hit lyst the kynge, be the advise off þe more parte off hem, chaunge any off hem. And þat euery yere be chosen be þe kynge iiij. lordes spirituell, and iiij lordes temporall, to be ffor þat yere off þe same counsell, in like ffourme as þe said xxiiijti shall be. And that thai all haue an hed, or a cheeff to rule þe counsell, on off þe said xxiiijti, and chosen be the kynge, havynge is office at the kynges pleasur; wich mey thanne be callid, Capitalis consiliarius. It shall not be necessarie, þat the xij spirituell men off this covnsell, haue so gret wages as the xij temporall men; be cause thai shull not nede to kepe an houshold in thair contray, while thai ben absent, as the temporell men moste nedes

doo, ffor thair wyffes and childeren. By wich consideracion the spiritуell juges in the courte off parliment off Parys, taken but cc. ffrankes by þe yere, where as þe temporell juges þeroff taken by the yere ccc. ffrankes. The said viij.te lordes also, wich be reason off þer baronyes and estates bith to þe kyng, consiliarí natí, and þerfore awghton to counsell hym at all tymes when he woll, nede not to haue gret wages ffor thair attendance to is covnsell, wich shall last but ffor a yere. Ffor temporell men, wich be reason off þer enheritaunce and livelod bith made shyreffes ffor a yere, taken off þe kynge litle, and all most nothyng ffor thair seruice off þat yere. And thoughe þat wages off the said xxiiij.ti counsellers seme a newe and a grete charge to þe kynge, yet when hit is considered, how gret wages the grete lordes and other men, wych were off the kynges counsell in tymes passede, toke ffor thair attendance therto, wich maner off counsell was nothynge so behouefull to the kyng and to his reaume as this will be, wich wages shall than forthwarde cesse; þe wages off þe xxiiij.ti counsellours shall apere no gret charge to the kynge. And I can suppose, þat some kynges be ffor this tyme, haue gyven to some on man þat hath serued hym, also moche livelod yerely, as the said wages wyll com to. And if the same wagis be thought to grete charge vnto þe kyng, þe forsaid counsellours mowe be in lesse nowmbre, as to be xvj counsellours off privatis personis, with ij lordes spirituell, and ij lordes temporell; so as then thai be in all but xx.ti persones. Thies counsellors mowe contenually, at soche owres as shal be asseigned to thaym, comune and delibre vppon the materis of defeculte that ffallen to the kynge; and

then vppon þe mat*er*es off þe pollycye off þe reaume; as how þe goyng owt off þe money may be restrayned, how bullyon mey be brought in to þe lande, how also plate, juelles, and mony late born*e* owt, mey be geytun ageyn; off wich right wyse men mowe sone fynde the meanes. And also how þe p*ri*ses off march*a*undise growen in this lande mey be holde vp and encressed, and the p*ri*ses off m*er*chandyses browght in to this lande abatid. How owre nauy mey be mayntened and augm*en*ted, and vppo*n* suche o*þer* poynt*es* off police, to the grettest p*ro*fyte and encresse, *þa*t eu*er* come to this lande. How also þe lawes mey be amendet in suche thyng*es* as thay neden reformacion in; wher through þe p*ar*lement*es* shall mowe do more gode in a moneth to þe mendyng*e* off the lawe, then thai shall mowe do in a yere, yff þe amendyng*e* *þer*off be not debatyd, and be such counsell ryped to thair hand*es*. *Þer* mey be off this covnsell, when thai liste come *þer*to, or *þa*t thai be desired be þe said counsellours, þe grete officers off þe lande, as Chaunceler, tresourer, and p*ri*ve seell; off wich þe chaunceler, when he is p*re*sent, mey be p*re*sydent, and haue þe supp*re*me rule off all þe counsell. Also the Juges, the Barones off þe exchequier, þe clerke off the rolles, and suche lordes as þe forsaid counsellours woll desire to be w*ith* thaym for mat*er*es off gret deficulte, mey be off this counsell when thai be so desyred, and ell*is* not. All o*þer* mat*er*es wich shall cons*er*ne this counsell, as whe*n* a Counsellour dyeth, how a new counsellour shall be chosen, how mony owres off the day this counsell shall sytt, when thai shall haue any vacasion, how longe any off hem mey be absent, and how he shall haue his leue, w*ith* all o*þer* artycles

necessarye ffor the demeynynge and rule off this counsell, mowe be conseyued be layser, and putt in a boke, and that boke kept in this counsell as a registir or a ordinarye, howe thai shall doo in euery thynge.

CHAPTER XVI.

HOW THE ROMAYNES PROSPERED WHILES THAI HADE A GRETE COUNSELL.

The Romaynes, while thair counsell callid þe senate was gret, gate, through þe wysdome off that counsell, the lordshippe off gret partye of the world. And aftirward Julyus, thair ffirst emperowre, counselled by þe same senate, gate the monarchie nerhande off all þe world. Wherthrough Octavian, þer secounde emperour, commounded all þe world to be discribed as subget vnto hym. But aftir this, when yll dysposed emperours, as Nero, Domician, and oþer had slayn grete parte off þe senatours, and dyspiced the counsell off þe senate, the estate off þe Romans and off þer emperours beganne to fall doune, and hath ffallen alwey sythyn, in to suche decay, þat nowe the lordeshippes off þe emperour bith not so gret, as be þe lordeshippes off some kynge, wich, while þe senate was hole, was subget to þe emperour. Be wich ensample it is thought, þat yff the kyng haue such a Counsell as is beffore specified, his lande shall not only be ryche and welthy, as were

þe Romans, but also is hyghnes shalbe myghty, and off poiar to subdue his ennemyes, and all oþer that he shall liste to reygne uppon. Off such ensamples mony of the bokes off cronycles be full; and in especiall þe cronycles off þe Lacidemonies, and off þe Authenences, wich, whill thai prospered, were best counselled, and most dyd aftir counsell off any people off þe world, excepte the Romayns. But when thai lafte such counsell, thai ffell into non poiar and pouerte; as off the Cite off Athenes it mey well apere, be that it is nowe but a poure vilage, and some tyme was the moste worshipfull Cyte off Grece.

CHAPTER XVII.

HERE FOLOWETHE ADUERTYSMENTES FOR THE GEUYNG OF THE KYNGES OFFYCES.

Yff it woll lyke þe kyng to gyff non office, in to the tyme þat his entente therin be comened with his counsell, and thair opiniyon by his hyghnes vnderstonde in the same, he shall mowe so rewarde his seruantes with offices, as ther shall be lityll nede to gyff hem moch off his livelod, and his offices shall then be geuen to soche as shall only serue hym selff. Wher through he shall haue than a greter myght, and a garde off his officers, when he liste to call thaym, than he hath nowe off his oþer ffeed men vndre the astate off lordes. Ffor the myght off þe lande, aftir the myght off þe grete lordes þeroff,

stondith most in þe kynges officers. Ffor thai mowe best rule þe contreis wheras þer offices ben, wich is in euery partie off þe lande. A pouere baylyff mey do more in his bayille, then any man off his degre dwellynge with in his office. Some fforester off þe kynges, that hath non oþer livelod, mey brynge moo men to þe ffelde well areyed, and namely ffor shotynge, then mey some knyght or Squyer off ryght gret lyuelod, dwellynge be hym, and hauynge non offyce. What than mey gretter officers do, stewardes off gret lordeshippes, reseyvors, constables off Castels, maystir fforesters, and such oþer officers; be sydis the hygher offycers, as Justices off fforestes, Justices and Chambirlayns off Contreis, þe warden off þe portes, and such oþer? Ffor sothe it is not lyghtly estymable, what myght þe kynge may haue off is officers, yff euery off hem hade but on office, and serued non oþer man but þe kynge. Nor hit is ease to be estemed, howe mony men mey be rewarded with offices, and how gretly, yff thai be discretly geuen. The kynge givyth mo than M^tt offices, be sydes tho þat my lorde þe prince geuyth, off wich I reken þe officers, as the kynges officers. Off thes officers some mey dispende by þe yere, by reason off is office, cc. ℔i., some a c.℔i., some a c. marc, some xl. ℔i., some l. marc, and so downwarde. So as þe lest off hem, þough he be but a parker, takynge but ij^d on a dey, yet he hath be þe yere iij. ℔i. x^d, be sydes his dwellynge in þe logge, his cowe ffor is mylke, and such oþer thynge goynge abowte hym, and the ffees off is office, so as þat office is to hym also profitable as wolde be a c.s. off ffee or rente, wich is a feyre lyuynge ffor a yoman. How mony men then off euery estate, and off euery degre, and how gretly,

mey the kynge rewarde *with* offices, *with* owt gyuynge awey off his livelod. Ffor soth the grettest lordes livelod in Englande mey not suffice to rewarde so many men, though he wolde depa*r*te hit eue*r*y dell amonge*s* is se*r*uante*s*; nor ij. the gretteste lorde*s* off Englond mey make so gret a myghte as þe kynge mey haue only off his officers, yff thai were holliche and only is se*r*uante*s*, and eue*r*y off hem had but on office. To this sane suche lorde*s* and o*þer* men, such as axen off þe kyng offices ffor thair se*r*uante*s*, that thai and all thair se*r*uantes shall alwey se*r*ue þe kynge, and is officers shul do hym the bettir seruyce, by reason thei bith in *þer* se*r*uice; ffor thai woll helpen hym to do so, and suffre non in thair companye, but suche as woll do so. Wher to may be said, that it is trewe thai shall do the kyng se*r*uice while thai be in thair companie; but so shulde thai haue done, though the kynge had neue*r* made thaym his officers. Wher fore þe kynge sh*a*l not be the bettir served, þ*a*t he hath yeue*n* his offices to thair se*r*uante*s*, but ra*þer* worse. Ffor owre lorde said, **Nemo potest duobus dominis seruire.** And so þe kynge shall lese the offices, as ffor any syngular service he shall haue ffor he*m*, or þ*a*t the same officers shulde thynke them selff by hold vnto the kynge ffor *þer* offices, wich is hyghnes hath yeue*n* them at þe contemplacion off *þer* maisters, and ffor no reward off any se*r*uice þ*a*t thai haue done, or shul doo vnto hym selff. Be consideracion wher off *þer* olde maistirs shall be bettir se*r*ued be thaym than thei were be fore; and so be more myghty in thair contraes to do what them liste; and the kynge in lasse myght, and haue the ffewer officers to represse hem when thai do a mysse. And this hath causyd mony men to be suche braggers and suytours

to þe kyng, ffor to haue his offices in *þer* cont*r*aes to thaym selff, and to *þer* men, *þa*t almost no man in sume contray durste take an office off þe kyng, but he ffirst had þe good will off þe said bragers and engrossers of offices. Ffor yff he dyd not so, he shuld not aftir *þa*t tyme haue pease in his contray; wheroff hath comy*n* and growen mony gret trowbels and debates in dyu*er*se cont*r*aes off Englond. Wich mat*er*es thrugly co*n*sidered, it semyth verely good, *þa*t no man haue any office of þe kyng*es* yefte, but he be ffirst sworne that he is s*er*u*a*nt to non o*þer* man, or woll s*er*ue any o*þer* man, or take is clothyng*e* or ffee while he s*er*uyth þe kyng. And *þa*t no man haue mo offices then on, except *þa*t the kyng*es* bretheryn mowe haue ij offices; and suche men as s*er*ue þe kyng abouute his p*er*son, or in his counsell, mowe haue in *þer* contrays a parkership*þe* ffor *þer* disporte when thay come whom, or such an o*þer* office, as thai mey wele kepe by *þer* deputes.

CHAPTER XVIII.

AUERTYSMENT HOWE CORODIES AND PENCIONS MEY BEST BE YEVEN.

And yff hit woll lyke the kynge to yeve no corodie nor pencion, wich he hath be ryght off his corowne, off eu*er*y abbey p*ri*ory, and o*þer* howses founded vpon hospitalite be any off his p*ro*genitours, in to þe tyme that his entente *þer*in be co-

muned and delybered *with* his fforsaid counsell, and þat his hyghnes haue vnderstond *þer* openyon in þe same; than shall men off his howsold be rewarded *with* corodyes, and haue honeste sustenance in *þer* olde day*is* when thai mey no longer ser*u*e; and þe clark*es* off is chapell þat haue wyfes, or be not avau*n*sed, be rewarded *with* pencions *with* owt grete abatynge off þe kyng*es* revenues, ffor *þer* reward*es* or sustenance. Ffor such corodes and pencions were ffirst geven to þe kyng ffor the same entent. But nowe off late tyme, o*þer* men then þe kynges servau*n*tes haue askyd þem, and be importune sute haue geyten gret parte off thaym, to þe kyng*es* gret harme and hurt off his said ser*u*antes; wich be þe cause *þer*off lyuen in þe gret*ter* penurie, and in non suyrte off *þer* sustenance in tyme comyng, when thai shall not mowe do þe kyng ser*u*ice.

CHAPTER XIX.

HOWE GRET GODE WOLL GROWE OFF THE FFERME ENDOWYNGE OFF ÞE CROWNE.

And when þe kyng, be þe meanes afor said or o*þer* wyse, hath gotyn ayen his lyuelod, yff then it wolde lyke is most noble grace to establysh, and as who sayth, amortyse þe same lyuelod to is crowne, so as it mey neu*er* be alyened *þer*fro, *with* owt þe assent off his p*ar*lement, wych than wold be as a newe ffundacion of is crowne, he shall be *þer*by the

grettest ffounder off þe world. Ffor *þer* as o*þer* kyng*es* haue ffounded byshopriches, abbeys, and o*þer* howses off relegyon, þe kyng shall þa*n* haue ffounded an holl reaume, and endowed it w*ith* gretter possescions, and better then euer was any reaume in cristendome. This maner off ffundacion mey not be ayenste þe kyng*es* prerogatyff, or his liberte, no more than is þe ffundacion off an abbey, ffro wich he mey take no p*ar*te off þe possescions wich he hath on*is* geve hym, w*ith* owt þe assent off *þer* covent. But this maner off endowment off his crowne shalbe to þe kyng a gretter prerogatyff, in þat he hath then enriched is crowne w*ith* such riches and possescions, as neuer kyng shall mowe take from it w*ith* owt þe assent off is holl reaume. Nor this mey be to þe hurte off *þe* prerogatyff or power off is successours; ffor, as it is shewid be fore, it is no prerogatyff or power to mowe lese any good, or to mowe wast, or put it awey. Ffor all such thynges come off impotencie, as doyth power to be syke or wex olde. And trewly, yff þe kyng do thus, he shall do *þer*by dayly more almes, þan shall be do be all the ffundacions *þat* euer were made in Englond. Ffor euery man off þe lande s*hal* by this ffundacion euery day be the meryer, þe surer, ffare þe better in is body and all his god*is*, as euery wyse man mey well conseyue. The ffundacion of abbeys, of hospitals, and suche other houses, is nothyng in comparisoun herof. For this shalbe a collage, in whiche shul syng and pray for euermore al the men of Ingland spiritu*el* and tempor*el*. And ther song shalbe suche among other antemes: I blissed be oure lord God, for that he hath sent kyng Edward the iiij to reigne vpon vs. He hath don more for

vs, than eu*er* dide kyng of Inglond, or myght have done before hym. The harmes that hath fallen in getyng of his Realme, beth now bi hym turned into our altheyr goode and profite. We shul nowe mowe enjoye oure owne goode, and live vndir justice, which we have not don of longtyme, God knowith. Wherfor of his almesse it is that wee have al that is in oure wone.

CHAPTER XX.

AUERTISEMENT FOR MAKYNG OF PATENTIS OF GIFTIS.

It is nat ment bi the premisses, but that the kyng without the assent of his p*ar*lement shal gyve to suche as don hym singuler s*er*vice, land for t*er*me of theyr lives. For therby his corowne may nat be disherited; for that land wil sone come ageyn. But than it were goode that the same land be no more gyven; for ellis importune suters wil gape vpon suche reu*er*siouns, and oftentymes asken hem or they befall. And whan they bien fal, the kyng shal have no rest with suche suters, vnto the tyme his highnesse have gyven ageyn al suche lond as he hath oonys gevyn. Bi contynuaunce þ*er*of, that land shal nat s*er*ve hym but for giftes, as don offices, corodies, and pensiouns. And triewly it were goode that of al the kynges giftes his patentis maden mencioun that they were passed, de auisamento consílíí suí; and namely for a yeere or ij. Ffor if such an ordre

be kept, men wil nat be so hasty to aske rewardis, but if thei be of right goode merites; and many men wil than be of bett*er* gou*er*naunce, for the kynges counseil shuld deme hem worthy to be rewarded. And they that opteyne nat that they desire shal have thanne litel coloure of grucche, considryng that they lak it bi the discrecioun of þe kyng*es* counseil. And the kyng shal have herby grete rest, and be wele defended ageyn suche importune suters. And yit he may leve this ordre whan that hym list.

EXPLICIT.

CRITICAL NOTES.

CHAPTER I.

P. 109. l. 10. **wol**] lust C.

l. 17. **openly**] playnly Y.

l. 18. **boke**] om. L.

l. 20. L inserts *the said* before *Seynt*. For *Seynt*, L has *Sncf*; i.e. the abbreviation for the Latin *Sanctus*, and so passim.

l. 24. **we cal**] were callid L.

hade no kynge &c.] hade a kyng, a man that &c. D^2.

P. 110. ll. 2–4. **and yet . . . roialy**] om. D^1, Lb, H^2 (homoioteleuton).

l. 6. hevene above C, Y.

l. 7. folie desire C, Y, D^1, Lb, H^2, D^2 (man. pri.).

l. 10. **thynges**] kynges L.

l. 11. land and oþer goodis C.

l. 12. **do to**] to do L.

l. 15. ruled onlye by God D^1, Lb, D^2. by God oonly C, Y.

l. 25. **into**] to L.

l. 27. bien even and egall C, Y.

CHAPTER II.

P. 111. ll. 2–3. **Title**] The title is from Y, with which C seēms to agree but is mutilated. L has no break here; D^1, Lb, H^2 make a division but have no new title.

l. 11. **The**] This L.

l. 13. **this**] om. L.

l. 18. **though**] thought L.

P. 112. l. 1. Nivus L.

l. 9. **lawes seyn**] lawe seythe C, Y.

l. 18. **they**] om. L.

l. 26. **ycos, etc.**] ycos, quod est scientia C, Y.

l. 27. **regimen**] a regimine L.

l. 28. reignigh L.

l. 34. **in Felici**] infelici L.

P. 113. l. 11. L inserts *of* before *be ganne*.

l. 12. might and power C, Y.

CHAPTER III.

The *title* is from C. In L alone is there no new title.

P. 114. l. 6. nobles of his lande L.

l. 11. empouerisched, kepte under and, as who saithe destroyed Y, H^1, which also add in the margin 'shewing of the grete poverte and misere that y^e comunes of Fraunce lyveth inne.'

l. 16. **of bestis slayn &c.**] This is the reading of all the MSS. except L, which reads 'bestis slayn. For the nobles . . . lande ete such catalle as thai brede. And the commons weren &c.' But apart from the consensus of the MSS. the reading in the text is confirmed by the parallel passage in the *De Laudibus*, c. 35.

l. 21. **theis**] knees D^1.

l. 23. **were**] was C, Y, Lb, D^2.

l. 27. **arted**] compelled D^1.

l. 28. **ground**] erthe L.

l. 31. wepens L.

l. 34. **the**] om. L.

P. 115. l. 12. **and therfore**] om. L.

l. 16. **well**] om. L.

l. 22. **Bretayn tho called**] om. L. and thai grauntid L.

l. 29. in welthe L man. rec., not seeing that *welthe* is an adjective.

l. 30. **to the**] to thair L.

CHAPTER IV.

P. 116. l. 8. **whiche þe**] added in a later hand in L.

l. 27. **a greter**] grete L.

P. 117. l. 5. **nowe**] om. MSS. except L.

l. 11. thourgh L.

l. 13. **reigned**] reignith L.

l. 18. **but**] om. L.

l. 33. **nat.**] added above the line L.

CHAPTER V.

P. 118. l. 12. **and**] om. L.

l. 13. creaunces L, and so in l. 18.

l. 16. **be**] om. L.

l. 24. **parte**] peny C, Y.

P. 119. l. 3. **his unsuyrte**] so L man. sec.; his owne suyrte L. man. pri., C, H^2, Lb; his owne unsuretie Y; leste to his own sewertie D^2.

l. 11. **man**] men L.

l. 20. shalbe necessite bi arted L.

l. 21. **exquysite**] requysite L, Cb.

l. 22. **defaute**] a faute C, Y.

l. 26. **shuld be**] ought to be C, Y, D^1, Lb, H^2.

l. 29. impossible L.

l. 30. specife L.

l. 31. **to a**] off a L.

CHAPTER VI.

P. 120. l. 7. sufficiantz C, sufficiauntes Lb.

l. 13. **cases**] causes L, courses Cb.

l. 15. **chaunce**] chaunge L.

l. 20. **wich**] with L.

l. 21. in no wise may be put C, Y, D^1, Lb; must be put H^2.

P. 121. l. 2. **may**] om. L. Here Y and H^1 add in the margin 'Ye diversite of ye kinges power and noon-power.'

l. 4. **haue**] om. L.

l. 6. **or**] ro L.

l. 11. **more**] om. L.

l. 30. garderobe C, Y, D^1, Lb, H^2, D^2.

l. 33. **haue**] om. L.

P. 122. l. 10. **the**] so L, D^1, Lb; thoo Y; theym C; thos D^2.

l. 14. courtes, his counceil, his garde, and other seruauntes D^2, R, Cb.

l. 18. **of**] vpon L.

ll. 20–1. **kepyng of the**] om. L.

l. 22. **the**] om. L.

l. 27. mey not certenlye D^1, D^2, Lb, H^2.

l. 32. **is**] as L.

P. 123. l. 5. shalbe alway L.

l. 14. **suffice**] suffre C, Y.

l. 15. **mowe**] om. D^1, Lb, H^2.

l. 16. **Now, as I suppose**] om. L (homoioteleuton).

CHAPTER VII.

l. 26. shall fall L.

P. 124. l. 6. **pope**] bysshope of Rome D^1. Cb omits the whole phrase.

l. 8. **to**] om. L.

l. 15. **shorte demure**] so L, C, D^1, cf. Epit. 'pro longitudine itineris, aut spatio commorationis;' shorte abyding and devoure Y; abode and deuoire D^2; demeanour H^2.

l. 19. **communaltie**s] counceiles D^2, R, Cb.

l. 25. The whole of this '*Item*' is omitted in R.

P. 125. l. 8. **parte þerof**] partie þerof L; parte of his lordshippes C, D^1, Lb, H^2; lordship D^2.

l. 15. **serpes**] so L, Lb, D^1; serpis C, Y; serples D^2, H^2; while Cb cuts the knot by reading *pearles*.

ll. 16–17. **conuenyent**] om. L. **roiall**] roially L.

l. 21. **trappers**] The previous editors without any MS. authority read *traps*.

l. 26. **subgeccion**] abiection D^1, Lb.

CHAPTER VIII.

P. 126. l. 18. **not**] om. L.

ll. 21–22. **ouer . . . remaynynge**] This sentence is supplied from C; it is omitted in L, owing to the recurrence of the word 'remain.'

l. 25. **mey be**] me be L man. pri.; cor. *may be*.

l. 26. wher of L.

P. 127. l. 9. **in**] om. L.

ll. 10 ff. **And therfore &c.**] From this point to the end of the chapter is omitted in Cb, which simply adds: 'Therefore the Realme ys bounden to sustaine the Kinge rulinge by soe favourable Lawes and Princely Lenitye.'

ll. 18–20. **Wherfore . . . bonis**] This sentence is omitted by the previous editors, though it is in every MS.

CHAPTER IX.

l. 26. **Here he shewith**] Om. Y, R. Here be shewed C, D^1, Lb, H^2; Hereafter be D^2.

P. 128. l. 1. **certayne**] certaynte C, Y, D^2.
l. 3. **thynk**] thyng L.
l. 4. **no lordis**] no ij° lordes D^2; and so in l. 8 infra.
l. 13. **ffor his**] ffor þe L.
l. 15. **wold**] wol L.
l. 18. **an**] om. L.
l. 34. **any**] euery C, Y, D^1, Lb, H^2; many subgettes desyren D^2.
P. 129. l. 4. **is**] as L.
l. 15. **Pepyne**] Pepeny L.
l. 21. wich ij (two) was . . . subgettes L.
l. 30. **late**] om. D^2.
l. 31. **gyff**] given Y; gevyn D^2.
P. 130. l. 2. Herry the thridde C; the iijth L.
l. 6. **whos**] wich L.
l. 20. The previous editors read, without any MS. authority, 'Such was the case of a great Duke.'
l. 28. **for**] fo L.

CHAPTER X.

P. 131. l. 4. **ouer**] o*þer* L.
l. 14. **tho**] om. L, Y, Lb.
l. 27. was nor is D^2, R. Cb.
P. 132. l. 1. Here Y and H^1 add in the margin, 'Ye excessif subsidies in Fraunce taken bi the King.'
l. 12. **mete**] but L.
l. 21. **biynge**] bryngynge L.
l. 25. entreth L.
l. 28. **litil wol**] no wull D^2, R, Cb; nihil lanæ Epit.
l. 30. 'Thexcessif imposicions used by the Duc of Burgoigne in his lordshippes' Y and (practically) H^1, margin; 'exize' Cb, margin.
P. 133. l. 6. **were**] om. L.
l. 7. **therin**] the reaume L.
l. 19. **departyng**] om. L.
l. 21. **ouer sore**] enforce L.
l. 24. **fee**] om. L, Lb.
l. 26. **kepe**] om. L.
l. 31. **þai**] *þer* L.
P. 134. l. 7. **no**] mony L.
l. 15. **also**] om. L.

l. 18. **mo**] no L.
l. 19. **a**] om. L.
l. 20. **infame**] fame L.

CHAPTER XI.

P. 135. ll. 2–3. **Title**] Instead of this heading Y and H^1 have, 'The Subsidie that the Souldane takith of his Subgiettes.' Cb has the same title; but it is crossed out and the usual one substituted.
l. 17. patriarkes L.
l. 18. that is to saying Lb.
P. 136. l. 1. **ben done**] biden Y.
l. 5. **thought**] tough L.
l. 8. **be sate**] besitte C.
l. 14. **nygh**] myghty L.
l. 15. **his**] om. L.
l. 16. 'Ye Kyngs rewardis yt he geveth, were bettyr in rede money than in landis, for both parties' Y, H^1, margin.
l. 25. on money and in hande C, Y.
l. 34. **so gret**] so goten C.
P. 137. l. 4. **that**] om. L.
l. 7. **to**] om. L.
l. 9. **commons**] Here and in the next three chapters L has 'coẽs,' the abbreviation for the Latin *communitates*.

CHAPTER XII.

l. 14. POUERE] kepte in pȯvertie Y, Cb. The titles of this and of the next chapter are crossed out in D^2; they are wanting in R, and are supplied in Cb from a MS. of the type of Y.
l. 23. this it is to say that L.
l. 24. **soth**] om. L.
l. 27. **no**] not L.
P. 138. l. 7. **owre**] oþer L, D^1, Lb, D^2.
l. 9. **owre**] om. L.
l. 20. made insurrexyon D^1.
l. 22. **thai**] om. L.
l. 23. fegth L.
l. 27. **harnes**] armes D^1, Lb, H^2.

l. 34. **through**] trough L.
manasheyng] manace C, Y, D^1, Lb, H^2; manasys or D^2.
P. 139. l. 2. **pouerte**] pouere men L.
l. 3. **man hath**] men haue L.
l. 4. **for**] om. L.
l. 20. **imfame**] L.
l. 27. **ther**] than L.
l. 29. **confedre**] so Y, D^1, D^2; considre L, Lb, C, H^2.
l. 34. **ffor þe gode**] so Lb, H^2, and (practically) D^1; ffor *þer* gode L; of theyr goode for the defence C, Y, D^2.
P. 140. l. 3. **shefe**] fflese L.
l. 14. **and**] om. L.

CHAPTER XIII.

P. 141. l. 9. tilliers C, Y.
l. 15. **slowe**] sowe L.
l. 29. **ffor**] off L.
P. 142. l. 5. **is**] as L.
l. 11. **not**] om. L.
l. 12. **cowardisse**] cowardnes H^2.

CHAPTER XIV.

P. 144. l. 10. pulike L.
l. 19. **in**] om. L.
l. 24. **many**] any L.
l. 26. determyd L.
l. 30 **is**] om. D^1, Lb, H^2, D^2.
l. 31. **day**] om. L.

CHAPTER XV.

P. 145. ll. 2–3. **Title**] in estableshed L. Y and H^1, which divide this chapter into two (v. inf.), give as the heading of the former part: 'Shewing in maner the guiding of the kinges counsellours of late yeres.' Cb has both titles, but makes the title given by Y, H^1 into the last sentence of the preceding chapter.
l. 9. **treded**] entreated Y.
l. 12. **thair**] om. L.
l. 18. **owed**] ought C.
l. 19. **þer**] tho C, Y, Lb, D^1, H^2; than D^2.

l. 24. **parcial**] parcialite L (from above).

l. 25. **or the**] L omits *the*.

l. 30. **and**] om. L.

P. 146. l. 2. **offices**] office L.

l. 7. **hit is thought**] Here, in the middle of a sentence, Y and H^1 begin a new chapter with the heading: 'How the kinges counsaill may be electe and establisshed, for wele of the king and his reaume.' Cb inserts this title in the margin a little lower down. H^2 begins a new sentence with 'Hit is thought.'

l. 10. **chosen**] om. L.

l. 12. **this**] so L; the rest, *the*.

l. 15. **And**] om. L.

l. 17. Justice L.

l. 18. **Common**] cõie L (v. s.)

l. 24. **þat**] þe L.

l. 30. **consiliarius**] consilarius L; cancellárius D^1, Lb; Justitiarius R.

l. 33. **an**] om. L.

P. 147. ll. 1–2. **consideracion**] Here ends H^2. It is not a case of mutilation, for more than a third of the page is left blank.

l. 2. **the courte**] L omits *the*.

l. 14. **þat**] the C.

l. 19. **therto**] wherto L.

l. 21. **forthwarde**] forthwith D^2.

ll. 25–6. **wyll . . . wagis**] om. L (homoioteleuton). The lacuna is supplied from C.

l. 29. **be**] om. L. **with**] wech L.

l. 34. dececulte L.

P. 148. ll. 4–5. **late borne owt**] om. C, Y.

l. 34. **haue**] om. L.

P. 149. l. 1. **ffor**] ffro L.

l. 4. **ordinarye**] ordynal C, Y, D^2.

CHAPTER XVI.

l. 12. L inserts *wherthrough* before *and*.

CHAPTER XVII.

P. 150. ll. 14–15. **Title**] This heading is from D^1. L makes no division of chapters here. In C the title is mutilated.

l. 14. **folowethe**] folwen C; folowen Y, D^2.
l. 16. **woll**] so L; the other MSS. *wold*.
l. 19. **mowe**] more L, Lb, D^1; om. D^2.
l. 23. **greter**] gret L.
P. 151. l. 2. **is**] om. L.
l. 4. **bayille**] bailywik C, Y, D^2; balyeshepe D^1.
l. 10. **than mey**] mey than L.
l. 12. maystir off L.
l. 15. **and**] om. L.
l. 16. estimably L.
l. 27. **a**] om. L.
l. 30. **hym**] om. L.
l. 33. **lyuynge**] thynge L.
P. 152. l. 12. **shul**] shuld L.
l. 20. officers L.
l. 30. **before**] aforn C.
l. 34. **causyd**] casyd L.
P. 153. l. 1. **haue**] om. L.
l. 11. **he is**] L omits *he*.
l. 17. contray L.

CHAPTER XVIII.

l. 27. **tyme**] om. L.
P. 154. l. 2. vnderstondyng L.
l. 12. importunyte L.
l. 14. hurt and harme L.
l. 17. Here at the end of Chap. xviii end D^1 and Lb. Both put 'Ffinis' at the end, so that there is no question of mutilation.

CHAPTER XIX.

l. 23. **as**] om. L.
P. 155. l. 10. **with owt**] with L.
l. 27. **ffundacion**] Here, in the middle of a sentence, and at the bottom of a page, ends MS. Laud. It is clear therefore that the last leaf of the tract has been torn off. See Introduction, Part III, p. 88, above. The remainder of the text is taken from the Cotton MS.

ll. 33–34. **Edward the iiij**] So C, D^2, Cb, R; Y and H^1 have 'Henry the vj^{the}.' See Introduction, Part III, pp. 94–5, above.

P. 156. ll. 4–5. nowe om. C. mowe om. D^2.

l. 8. **in oure wone**] So C; the other MSS. read *oure owne*. After this D^2, Cb, and R add: 'And therfore God contenewe his grace and persone in long lyffe w^t increse, in honour and magnificence, to his hartes desyer, and welth of this his realme.'

l. 11. **ment**] om. C.

P. 157. l. 11. **list**] D^2, Cb, R add: 'And God save the Kyng.'

GENERAL NOTES.

CHAPTER I.

Title.] In MS. L. the first three chapters of this work form only a single chapter with the above title. Though L. is the MS. on which I have based my text, I have not thought it worth while to disturb the ordinary arrangement and numbering of the chapters. Title of the work.

But for reasons stated in the Introduction, Part III. (above, p. 86), I have been unable to follow the first editor in extending this title to the whole work. These first three chapters are little more than a translation and recasting of portions of the author's earlier Latin treatise *De Laudibus Legum Angliæ;* cc. 1, 2 here=cc. 9–13 there; c. 3 here=cc. 35, 36 there.

Ther bith ij kyndes off kyngdomes, etc.] Fortescue is here speaking of the two kinds of monarchy, absolute and limited; or, as he calls them, *dominium regale* and *dominium politicum et regale*. Elsewhere (N. L. N. i. c. 16; Works, p. 77), speaking of the different forms of government, 'diversa dominandi genera,' he divides them into *dominium regale*, *dominium politicum*, and *dominium politicum et regale*. In the 'Declaracion upon certayn Wrytinges' (Works, p. 533) Fortescue divides 'lordshippes' into three classes, *dominium regale*, *dominium politicum*, and *dominium dispoticum;* where by *dominium regale* he probably means a limited, and by *dominium dispoticum* an absolute monarchy. Monarchy, absolute and limited.

Of the various attributes of sovereignty Fortescue selects two as specially characteristic of it: viz. legislative and taxative power. Where these powers are exclusively in the hands of the monarch, the monarchy is an absolute one; where they are shared by the subject, the monarchy is a limited one. It would appear from Fortescue's language that he regards the taxative as derived from the legislative power. This view may have been suggested to him by the practice of the English Constitution, in which the machinery Two special attributes of sovereignty: legislation and taxation.

for granting taxes was the same as that for making laws. But that there is in reality no necessary connexion between them is shown by the fact that they may be, and as a matter of history have been, in the hands of different bodies. In England, e.g., the Commons had established their right to be consulted on questions of taxation, some time before they won a similar position in regard to legislation.

Question of the franchise not raised by Fortescue.

It is noteworthy that Fortescue never raises the question who are the persons entitled to share in these powers of legislation and taxation; in other words, what is the qualification for full citizenship. It cannot be said that this question lay wholly outside the sphere of his enquiries. It is substantially the question between aristocracy and democracy, which had great interest for Aristotle and his mediæval followers; while in the history of the English Constitution it appears as the question of the franchise. Perhaps he regarded the question as sufficiently settled by the practice of the English Constitution. But that practice was itself the subject of legislative interference during the Lancastrian period (vid. S. C. H. iii. 256–9). The Statute of 1430 (8 Hen. VI. c. 7), which limited the county franchise to the forty-shilling freeholder, is one of the most important land-marks in the history of representative government in England during the Middle Ages. Dr. Stubbs indeed (u. s. p. 258) thinks that the Act can have had little practical effect, because the same class of persons were returned to Parliament after the passing of the Act as had been returned previously. But this does not prove that the Act may not represent a successful attempt on the part of the ruling classes to maintain a hold upon the representation of the country, which they felt that they were in danger of losing (of. Rogers, Work and Wages, p. 369).

Politic character of English royalty.

It shows how thoroughly Fortescue's doctrine as to the limited or 'politic' character of English royalty had penetrated the national consciousness, that we find it turning up in the most unexpected quarters. Thus Morley Bishop of Worcester, in his sermon preached at the coronation of Charles II, says: 'A Political Monarch governs his Subjects, as a Father doth his Children, by equal and just laws, made by their own consent to them. *Despotical* Government is that of the *Turks*, and *Muscovite;* but *Political* is, and ought to be the Government of all Christian Kings; *I am sure it is of ours'* (Waterhous, p. 20).

This diuersite is wel taught bi Seynt Thomas in his

boke &c.] St. Thomas Aquinas, the greatest theologian of the Roman Church, was born at Aquino about 1225, and died in 1274, on his way to the Council of Lyons. Fifty years after his death (1323) he was canonized, and in 1567 Pius V solemnly proclaimed him as the fifth doctor of the Church in addition to SS. Augustine, Ambrose, Jerome, and Gregory the Great; but in the imagination of the Middle Ages he filled a far greater space than any of them. M. Janet truly and eloquently says: 'La philosophie de Saint Thomas est l'image fidèle de son temps: c'est le nœud du moyen âge, c'est le moyen âge lui-même; c'est là qu'il a rassemblé, en apparence pour l'éternité, tout ce qu'il a su, pensé et aimé' (Hist. de la Science Politique, i. 399). The book alluded to in the text is the *De Regimine Principum*, the most popular, and, next to the *Politics* of Aristotle, the most authoritative political handbook of the Middle Ages. Of this however only the first book and the first four chapters of the second are by St. Thomas; the remainder is the work of one or other of his disciples, probably of Ptolemy of Lucca (vid. Baumann, Staatslehre des h. Thomas von Aquino, pp. 5–6; Janet, i. 414–5; S. C. H. iii. 240). In the genuine portion of the work there is nothing that really bears on the difference between absolute and limited monarchy. St. Thomas is there content to follow Aristotle (Politics, Bk. vi) in his division of governments into three right forms: monarchy, aristocracy, and republic (*πολιτεία*), with their corresponding perversions (*παρεκβάσεις*), tyranny, oligarchy, and democracy. But the difference between the right and the perverted forms of government depends entirely, according to St. Thomas, on their respective aims, and not on their constitution, and does not therefore affect the question here discussed.

S. Thomas Aquinas; his importance in mediæval history.

The *De Regimine Principum.*

In ii. c. 8 a distinction is drawn between the *principatus politicus* and the *principatus despoticus*, the difference being that in the former the citizens are governed by one or more persons 'secundum ipsorum statuta,' whereas in the latter the monarch governs 'per eam (legem) quæ est in pectore principis.' In the first chapter of the fourth book it is said still more emphatically: 'legibus astringuntur rectores politici, nec ultra possunt procedere, ... quod de regibus et aliis Monarchis principibus non convenit, quia in ipsorum pectore sunt leges reconditæ, prout casus occurrunt' (cp. also iii. c. 16). In iv. c. 8 the *principatus regalis* is expressly included under the *principatus despoticus*; while in iv. c. 1

Principatus Politicus and *Principatus Despoticus.*

the essence of 'politic' rule is made to consist in the *elective* character of the ruler or rulers: 'modus autem assumendi in hoc gradu electivus est in quocunque hominis genere; non per naturæ originem ut de regibus accidit.' Thus not only (iv. c. 8) is aristocracy included under the head of 'politic' rule, but also the Empire and the Roman Dictatorship come to some extent under the same head because of their elective character, in spite of the legislative authority and arbitrary power ('institutio legum et arbitraria potestas') which emperors have in common with kings (iii. c. 20; iv. c. 1). Politic government is best for a state of innocence, or where men by wisdom and virtue approach that state, as was the case with the ancient Romans (ii. c. 9; cf. Fortescue, N. L. N. i. c. 22). But there are certain regions, like Sardinia and Corsica, which 'propter malitiam gentis' can only be governed 'tyrannico regimine' (iii. c. 22). Seeing then that monarchical rule is essentially absolute, and politic rule essentially elective, it is very difficult to find in the *De Regimine Principum* any place for Fortescue's limited monarchy or *dominium politicum et regale;* and we are driven to conclude with Lord Carlingford, that 'Fortescue, while endeavouring to support his doctrines of Constitutional Monarchy by the authority of St. Thomas, really derived them from his own liberal sentiments, and the happy experience of his own country' (Fortescue, Works, p. 360*).

Fortescue's limited monarchy not really to be found in the *De Regimine* of Aquinas.

It is true that St. Thomas himself, unlike his continuator, admits the possibility of an elective monarchy; and where such is the case the king may be deposed or his power limited ('rex potest destitui [al. destrui], vel refrænari ejus potestas') if he fall into tyranny (i. c. 6). It is possible that this is the passage which Fortescue has in his mind. But there is nothing here about 'politic' government, nor does the *De Regimine* say how a tyrannical king is to be dealt with where the monarchy is not elective. Fortescue himself admits the right of subjects to elect their king only at the first 'incorperacion' of kingdoms (infra Chap. ii, ad init.), or 'quotiens eorum rex sine herede aliquo moriatur' (N. L. N. ii. c. 35; Works, p. 153; cf. ib. 508).

Question of elective monarchy.

Of the other works of St. Thomas Fortescue only quotes the *Summa Theologica* (Works, pp. 68, 97, 107, 132, 159, 532). With his commentary on Aristotle's Politics he does not seem to be acquainted, though it contains a passage which approaches more

Political doctrines of the *Summa* of St. Thomas.

nearly than any other which I have met with to the views of Fortescue (vid. Baumann, u. s. p. 135). But even from the former work he might have quoted passages far more pertinent to his purpose than any to be found in the *De Regimine;* e. g. *Prima Secundæ*, Quæst. cv. Art. 1: 'Circa bonam ordinationem principum in aliqua civitate vel gente duo sunt attendenda: quorum unum est, *ut omnes aliquam partem habeant in principatu.*' Then he enumerates after Aristotle the three right forms of government, and concludes that the best constitution is that in which all three forms are combined: 'Talis enim est optima politia bene commixta ex regno, in quantum unus præest; et aristocratia, in quantum multi principantur secundum virtutem; et ex democratia, id est, potestate populi, in quantum ex popularibus possunt eligi principes; et ad populum pertinet electio principum' (i. e. the election of the *multi qui principantur*). This theory of a mixed or balanced constitution, invented by Polybius, and adopted by Cicero in his *Republic* (whence probably St. Thomas borrowed it), has found considerable favour with more modern writers. And just as Polybius and Cicero saw the realization of this idea in the Roman State, so did St. Thomas (u. s.) find the same idea underlying the Mosaic system; while later writers have discovered in it the most leading characteristic and the most signal merit of the English Constitution (vid. Janet, i. 271–281, 417–8; Bagehot, The English Constitution, pp. 2–3).

Theory of a mixed constitution.

ad regem Cipri.] It is doubtful whether this was Hugh II the last of the Lusignans, who succeeded as a mere infant in 1253 and died in 1267, or his successor Hugh III, who died in 1284. The former is the opinion of Prof. Baumann (Staatslehre, &c., p. 22), the latter of Dr. Stubbs (Mediæval Kingdoms of Cyprus and Armenia, p. 24): who adds, 'it is certainly very curious that the composition both of the great Feudal Code of the Assizes, and of the manual of mediæval politics, should have a direct relation to this remote little island.'

a boke callid Compendium moralis philosophiæ.] The work alluded to here is the 'Compendium Morale Rogeri de Waltham.' Of this work there are two MSS. in the Bodleian, Laud. Misc. 616, and MSS. Bodl. 805. The former is the one which I have used. It is a well-written MS. in double columns of the fifteenth century, and formerly belonged to the Benedictine Monks of Oxford. The work is not in any real sense a treatise on

The *Compendium Morale* of Roger of Waltham.

moral philosophy, but consists of a series of moral disquisitions, especially on the virtues and duties of princes, illustrated by historical examples, and enforced by numberless quotations, especially from Seneca, which amply bear out the testimony of Leland (*Commentarii de Scriptoribus Britannicis*, ed. A. Hall, 1709, pp. 264–5; cf. Bale, *Catalogus Scriptorum*, Cent. IV. xvi) as to the author's wide reading and retentive memory. According to a table appended to the work, 135 authors are quoted in the body of it. Leland (u. s.) aptly describes the work as 'opus de memorabilibus dictis et factis.' Roger of Waltham also wrote a work called *Imagines Oratorum*, which I have not seen. Leland saw the MS. of it at St. Paul's. But I do not find it mentioned in the Catalogue of the St. Paul's MSS. in the 9th Report of the Historical MSS. Commission, Part I. Bale, followed by Pits and others, places his *floruit* in 1250. This is certainly too early. He was alive in 1332 (see Report, u. s. p. 2 a; and for other notices of him, ib. 28 b, 40 a, 45 a, 54 b, 69 a). Moreover, at fol. 42 a of the *Compendium* occurs the following allusion to himself: 'De quodam eciam rege Northwagiæ magno re et nomine (i. e. Magnus the Law-betterer, 1262–1280), viro virtuoso, litterato, sapiente, et justo, audivi quemdam clericum suum secretarium domini mei Antonii episcopi Dunolmensis et patriarchæ Ierosalem familiarem hoc referre.' Antony de Bek, who is here meant, did not become Bishop of Durham till 1283, (ob. 1311). Roger of Waltham appears therefore to have been in his service at some time of his life. He subsequently became Canon of St. Paul's; and, if this be the same person, Keeper of the Wardrobe to Edward II. In MSS. Dodsworth, vol. 35. fol. 112, there are some transcripts from his book of accounts in the keeping of the King's Remembrancer, which extends from May 1, 15 Edw. II, to Oct. 19, 17 Edw. II. And in a memorandum on the same page it is stated that this account was delivered at the Exchequer by Roger de Waltham in person on May 22, 3 Edw. III. His employment in the king's service did not prevent him from being a vehement supporter of the spiritual power, and he was evidently much alarmed at Edward I's encroachments on the independence of the clergy. At fol. 105 d occurs the following interesting passage: 'Et de tali resistencia dicit Boecius primo de consolacione, hoc consciencie libertas habet pro tuendo jure spreta potencium semper offensione. Sic nostrates nominatissimi sancti pontifices Cantuarienses de quibus

His date.

His tendencies strongly clerical.

recens habetur memoria, Thomas, Dunstanus, Edmundus . . . . quorum laudabilibus exemplis ad relevamen et defencionem jurium ecclesiæ et cleri prelati nostri temporis divina opitulante gratia poterunt animari. Ipsorum vero vestigia . . . non sequentes solo vocabulo prelati dicti, sed pocius Pilati et Cayphe.' And at fol. 28 a occurs a still more curious account of the way in which the French crown influenced the elections of abbots in the Cluniac monasteries. At fol. 38 d may be found an account of one of Edward I's judges, which supplies some details beyond those given by Foss, and therefore I venture to quote it here: 'Et hec legis equitas completa fuit nostris temporibus in domino Thoma Weylond, summo Justiciario; qui cum primus legem condidisset, ut, si minister regius in arestando aliquem preciperet arestato ne locum virga sua limitatum excederet, et si locum illum transiret arestatus, fractor carceris regii haberetur; idem Thomas primus in legem illam incidit, et ob id ad ecclesiam confugiens exul regnum tanquam reus criminis abjuravit.'

Curious anecdote of Chief Justice Weylond.

Fortescue quotes the *Compendium* not only here, but also in the heading to the tenth chapter of the treatise *De titulo Edwardi Comitis Marchiæ* (Works, p. 69*); where he acknowledges that he borrowed from it a reference to St. Augustine. It is possible that a closer comparison than I have thought it worth while to make, might reveal other instances in which Fortescue has taken his references at second-hand from this work (see above, p. 99). Here again Fortescue claims for his theories a literary sanction which does not really belong to them. Roger of Waltham has indeed a section (fol. 50 a), of which the heading is 'De temperato regimine prefectorum.' But it is rather the moral than the constitutional sense of the word *temperatum* that he is concerned with.

Fortescue's constitutional theories not really to be found in the *Compendium*.

and sumwhat bi Giles in his boke de regemine principum.] The author here intended is Ægidius Colonna, or, as he is more commonly called from his birth-place, Ægidius Romanus. The date of his birth appears not to be known. He was a pupil of SS. Thomas Aquinas and Bonaventura, and was appointed by Philip III of France tutor to his son, afterwards Philip IV. He became archbishop of Bourges in 1296, and died in 1316 at Avignon. It was his employment as tutor to a royal prince which gave him occasion to write his *De Regimine Principum*. That this also was a very popular manual is shown by the translations of it which exist. In the Digby MSS. 233 there is a copy of the English translation of this work. This translation has been attributed to

Ægidius Romanus.

His *De Regimine Principum*.

Trevisa, the translator of Higden's Polychronicon, but Mr. Macray has shown (Catalogue of Digby MSS.) that the name of the translator was Cliftoun or Cleftoun. This MS., which I shall occasionally quote, is a large folio in double columns of the fifteenth century. It contains also a translation by the same hand of Vegetius, *De Re Militari*. Among the books of Edward IV (Wardrobe Accounts, p. 152) is one, 'Of the Gouvernal of Kinges and Princes,' which Sir H. Nicolas believes to be this very translation of Ægidius. Ægidius' *De Regimine* was one of the three works on which Occleve based his metrical treatise with the same title: 'Of Gyles of Regement | Of Prynces plotmele thynke I to translate' (Occleve, *De Regimine Principum*, p. 74, ed. T. Wright, for the Roxburghe Club; cf. ib. xiii). What is probably a French translation of the same work occurs among the goods of Charlotte of Savoy, queen of Louis XI, under the title 'Le livre du Gouvernement des roys et princes' (Inventaire des Biens de C. de S. par A. Tuetey, p. 23). A work called 'Le regyme des Princes' is among the books of Charles Count of Angoulême, father of Francis I (Excerpta Historica, p. 348). Whether either of these was the translation of Ægidius into French verse by Henri de Gauché, mentioned by Sir H. Nicolas (u. s. pp. 237–8), I cannot say. The work was translated also into Hebrew, while a Spanish translation appeared at Seville in 1494 (Riezler, Die literarischen Widersacher der Päpste, p. 299). A copy of the original work was among the books given by Humphrey Duke of Gloucester to the University of Oxford (Munim. Acad. p. 772).

Fortescue's doctrines not taken from Ægidius.

But here again it is impossible to find anything to justify Fortescue's appeal to Ægidius as an authority on the subject of constitutional monarchy. The portion of the *De Regimine* which deals with the different forms of government is the second part of the third book. But this is little more than an expansion of Aristotle's views as to the three right forms of government, and their respective perversions. There is the polity in which the people is sovereign, 'totius est [populi] statuta condere' (III. ii. 2), but here there is no king. And there is plenty about the difference between the king and the tyrant; but even in the best monarchy there is no trace of any popular element.

In the fifth chapter of the same book Ægidius, while admitting that theoretically there is much to be said in favour of elective monarchy, declares in favour of hereditary royalty on grounds of

experience (experimentaliter). Like Fortescue he prefers succession through males, 'quia masculus est ratione femina præstantior.' But he had not, like Fortescue, any political interest in maintaining this thesis, for the question of female succession did not come up for decision in France till the death of Louis X in 1316, the year of Ægidius's own death. Fortescue quotes Ægidius in N. L. N. i. c. 16 (Works, p. 77); where the context is the same as here; and there, as here, he ignores the fact that Ægidius's politic government is not a monarchy at all. He quotes him also in N. L. N. i. c. 24 (Works, p. 85).

Government of the Jews.

the childeryn of Israell as saith Seynt Thomas &c.] This is from the *De Regimine*, ii. cc. 8, 9, which are not by St. Thomas. The author asserts more than once that the judges governed *politicè*, while the kings ruled *regaliter;* but the idea of taking the politic rule of the Judges over the Israelites in such close connexion with God's government of His chosen people, as to find in that combination an instance of *dominium politicum et regale*, is, as far as I can see, Fortescue's own. It occurs again, N. L. N. i. c. 16; cp. ib. c. 21.

in populum peculiarem &c.] This is a combination of Deut. xiv. 2, 'Te elegit ut sis ei in populum peculiarem,' with Exod. xix. 6, 'Vos eritis mihi in regnum sacerdotale;' cf. also 1 Pet. ii. 9.

Origin and character of monarchy among the Jews.

in to the tyme that thai desired to haue a kynge &c.] This question as to the origin of monarchy among the Jews is discussed by Fortescue at great length in N. L. N. i. cc. 11–16, 18, 21. He is there dealing with two difficulties: (1) since the Israelites sinned in asking for a king, royalty must be sinful; (2) How could God institute a tyrannical mode of government like that described by Samuel? This latter question is raised also by St. Thomas, *Summa*, *Prima Secundæ*, Quæst. cv. Art. 1, and is resolved by him in much the same way as by Fortescue, viz. that God was not instituting tyranny in what He said to Samuel, but only foretelling the abuses of the kingly power. To the former objection Fortescue answers: A. The sin of the Israelites consisted not in asking for a king, but (a) in the motive of their request, viz. that they might be like the heathen; (b) in deserting the King which they had already, viz. God, Who had done such great things for them (cp. what Fortescue says a little lower down about 'thair folie and vnkyndnes'). B. Things which

are brought about by the sin of man are not therefore bad in themselves; e. g. the death of Christ. Fortescue refers to the subject also in his 'Dialogue between Understanding and Faith' (Works, p. 487). There is a curious passage in Josephus (Ant. Jud. lib. vi. c. 4), in which that writer attributes the grief of Samuel at the request of the Israelites to his hatred of monarchy and preference for aristocracy as a form of government. (In lib. iv. c. 8 he attributes similar sentiments to Moses.) Fortescue was not likely to share Josephus's aristocratic sympathies. The subject of Saul's appointment is discussed by the Pseudo-Aquinas, *De Regimine*, ii. c. 9; iii. c. 11. And it has been a favourite topic with political writers. Lord Carlingford instances the discussion of it by Milton against Salmasius in the second chapter of the 'Defence of the People of England,' and by Algernon Sidney in the second chapter of his 'Discourses concerning Government' (Fortescue, Works, p. 358*). In one point Milton agrees with Fortescue: 'He (Samuel) tells not the people what their kings ought to do, but what they would do.' In another he differs widely from him: 'To what purpose should they cry to God because of the king that they had chosen, if it were not because a Kingly Government is an evil thing; not in itself, but because it most commonly does.... degenerate into Pride and Tyranny?' But then Milton had seen those barriers give way, which Fortescue hoped had been permanently established between kingship and tyranny in England.

wich amonge oþer thynges said &c.] Sallust, in a fragment preserved in St. Augustine, *De Civ. Dei*, iii. c. 17, describes the oppression of the plebeians by the patricians in very similar terms: 'Dein *servili imperio* patres plebem exercere, *de vita atque tergo regio more consulere, agro pellere*, et cæteris expertibus soli in imperio agere' (Fragmenta, 12).

the viijth chapiter of the first boke of kynges.] i. e. the eighth chapter of the first book of Samuel, according to our reckoning. See especially vv. 9–21 in the Vulgate.

Seynt Thomas also in his said boke prasith dominium politicum et regale &c.] As I have stated above that I cannot find 'in the said boke' anything about *dominium politicum et regale*, it follows that I cannot find there any passage in which that form of government is praised. It is true that St. Thomas urges strongly upon kings the danger and wickedness of falling into tyranny;

Kingship and tyranny.

e. g. i. c. 10 (ad init.), 'diligenti cura se ipsos (reges) observare debent, ne in tyrannidem convertantur;' cf. ib. c. 11 (ad finem), 'vehementer studendum est hiis qui regendi officium suscipiunt, ut reges se subditis præbeant, non tyrannos.' Compare also Ægidius, *De Regimine*, III. ii. 12, 'Probare volumus reges summa diligentia cavere debere ne convertantur in tirannos;' and his translator: 'We wollen preue þat kynges and princes sholde be most besiliche ware þat þei be come not tirauntes' (MS. Digby 233, f. 140 a). But how this danger is to be obviated neither of them very clearly states. In N. L. N. i. c. 26 (ad finem) Fortescue infers St. Thomas's approval of limited monarchy from his dread of tyranny, and does not, as here, state it as a fact. But in the *De Laudibus*, c. 37, ad fin., he says, 'Sanctus Thomas . . . optare censetur ut omnia mundi regna politice regerentur;' a passage which I have not found. According to Ægidius, however, tyranny is a lesser evil than insubordination: 'Nam magis est tollerabilis aliqualis tirannides principantis quam sit malum quod consurgit ex inobedentia principis et ex prevaricatione mandatorum eius' (III. ii. 34); 'Ffor som what of tyranndise may be bettre i suffred, þan þe harm þat comeþ 3if men ben vnobedient to þe prince, and breken his law' (MS. Digby 233, f. 160 b).

and yet thai both bith egall . . . as it mey . . . be . . . provid by infallyble reason.] This proof 'by infallyble reason' of the equality in power and dignity of the absolute and limited monarch is to be found in the N. L. N. i. cc. 22, 26. In the earlier chapter Fortescue maintains that both kings are equally like God, for though the law of an absolute monarchy is more like the law by which God governs the world, yet the law of a politic monarchy is more like that by which He rules the saints in bliss. In the later chapter he argues (as he does in Chapter vi. of the present treatise), that any limitation which prevents us from doing wrong is an increase rather than a diminution of power. Fortescue was evidently very proud of this demonstration, as is shown by the fact that in the *De Laudibus* he refers to it no less than four times (cc. 11, 14, 34, 37; cf. especially c. 14, 'in tractatu de Natura Legis Naturæ, horum duorum regum æqualem esse potentiam *doctis rationibus* ostendisti'). For a discussion of its value see the notes to Chapter vi. infra, p. 218.

CHAPTER II.

Title]. See Critical Notes.

Origin of kingship.

The first institucion, &c.] In N. L. N. i. c. 18 (Works, pp. 80–1) Fortescue discusses the question of the origin of kingship. He there says that it is due to the Law of Nature; (1) because every complex body naturally requires a regulative principle or head (cf. p. 188, below); (2) because man is naturally a social and political animal. And this result is not affected by the fact, that individual kingdoms have been founded on tyranny and oppression. Here Fortescue is discussing the *modes* in which a monarchy may arise. These, he says, are two: (*a*) by conquest; (*b*) by compact or election. As examples of the former kind of monarch he quotes Nimrod (Nembroth) the founder of Babylon, and Belus and Ninus kings of Assyria; as an example of the latter kind, Brutus the mythical eponymous hero of the Britons. This analysis is probably taken from Vincent of Beauvais. See the following notes.

Nembroth.] Cf. Gen. x. 8 ff. Fortescue discusses the case of Nimrod in N. L. N. i. c. 7, and mentions him again, ib. ii. c. 46; referring in both instances to St. Augustine. In the former chapter he speaks of him very much as he does here. Nimrod has in fact served political writers as the type of the tyrant whose dominion is founded on conquest, from the days of St. Augustine down to Sidney and Harrington: cf. Sidney's 'Discourses concerning Government,' chap. i. § 8, and Harrington's Works, p. 10. St. Augustine (De Civ. Dei, xvi. cc. 3, 4) translating the Septuagint version, which is οὗτος ἦν γίγας κυνηγὸς ἐναντίον Κυρίου τοῦ Θεοῦ, calls Nimrod 'gigas iste venator contra Dominum.' Another work which Fortescue probably had in his mind was the *De Morali Principis Institutione* of Vincent of Beauvais; for in N. L. N. i. c. 8 (Works, p. 71) he quotes from it with reference to Ninus, and the passage is no less applicable to Nimrod.

Nimrod a commonplace with political writers.

Vincent of Beauvais, and his *De Morali Principis Institutione.*

Among the Rawlinson MSS. there is a small folio of the fifteenth century (Rawl. C. 398), which originally belonged to Sir John Fortescue, as is proved by the armorial bearings displayed at the beginning of several of the treatises which it contains. Among these are the *De Mor. Princ. Inst.* of Vincent of Beauvais, further a

Chronicle of England by Richard Rede (on which see below, p. 185), and copies of two treatises of William of Auvergne (Gulielmus Alvernus), Bishop of Paris 1228–1248, one of which is cited by Fortescue in the *De Laudibus*, c. 4, under the title *Parisiensis: Cur Deus Homo*. [On William of Auvergne see Jourdain, Traductions d'Aristote, pp. 288–9.]

Dr. Stubbs, who sent Lord Carlingford some extracts from Vincent of Beauvais' *De Mor. Princ. Inst.*, took them from a thirteenth-century MS. belonging to Merton College (MSS. Merton. cxi), and does not mention the Rawlinson MS., though it has of course a special interest for students of Fortescue. It is the one which I have used throughout. Vincent of Beauvais was reader to Louis IX of France, and to him and to his son-in-law Thibault, Count of Champagne and King of Navarre, the *De Mor. Princ. Inst.* is addressed. In the Prologue the author states that this treatise is only the first instalment of a larger work which he contemplates. He seems however never to have carried out his intention. The passage bearing on Nimrod and Ninus is in the second Chapter (f. 90, v°): 'Cum enim omnes natura essent pares, Nembroth . . . primus regnum super homines usurpavit. . . . Unde legitur . . . quod . . . erat robustus venator coram domino; i. e. exactor et oppressor hominum amore dominandi fuit. . . . Mortuo Belo Nembrothide Ninus ejusdem filius,' &c.

[On Vincent of Beauvais and his great encyclopædic work, the *Speculum Mundi*, see Jourdain, Traductions d'Aristote, pp. 360 ff., and Lord Carlingford's note, Fortescue, Works, pp. 356* f. There is another educational treatise by Vincent, *De Eruditione Filiorum Regalium*, which I have not read. It was printed at Bâle in 1481. The *De Mor. Princ. Inst.* is said to have been printed, but no copy can be found. The *Speculum* also contains a system of political philosophy; vid. Riezler, u. s., p. 137.]

So Higden, Polychronicon, ii. 250, quoting Petrus Comestor, says, 'Nemphrot robustus venator hominum, id est, oppressor.' Isidore, Etym. vii. c. 6, says, 'Nembroth interpretatur tyrannus,' (cf. 'primus tirrannorum' here).

Rex a regendo.

rex dicitur a regendo.] This is a favourite commonplace of mediæval publicists. The earliest work in which I have found it is St. Augustine's *De Civ. Dei*, v. c. 12: 'reges . . . a regendo dicti.' From this it was taken by St. Isidore, who says (Etym. ix. c. 3), 'Reges a regendo: sicut enim sacerdos a sanctificando, ita et rex a

regendo: non autem regit qui non corrigit. Recte igitur faciendo regis nomen tenetur, peccando amittitur.' In the *Sententiæ*, iii. c. 48, Isidore gives a slightly different derivation: 'reges a recte agendo vocati sunt,' &c. [St. Isidore, 'lumen Hispaniæ,' was Bishop of Seville 599–636 A.D. His work called 'Origines sive Etymologiæ' was one of the chief manuals of the Middle Ages. Fortescue quotes it once or twice in the N. L. N., but only at second-hand.] From Isidore, mediately or immediately, the derivation was borrowed by later writers. I find it next in Hincmar [Archbishop of Rheims 845–882 A.D. On his political theories see Janet, i. 355–9, to whom I owe the following reference]: 'Rex a regendo dicitur, et si se ipsum secundum voluntatem Dei regit, et bonos in viam rectam dirigit, malos autem de via prava ad rectam corrigit, tunc rex est, et nullorum legibus vel judiciis nisi solius Dei subjacet: quoniam arbitria possunt dici, leges autem non sunt nisi illæ quæ Dei sunt,' &c. *De Divortio Loth. et Tetb.*, Quæstio vi. Hincmar uses the supposed derivation, as Fortescue does, to discriminate the king from the tyrant. Bracton uses it in the same way, lib. iii. c. 9. § 3. It is found without any such ulterior motive in Ægidius, *De Regimine*, III. ii. 29: 'nomen regis a regendo sumptum est.' Cf. Aquinas, *De Regimine*, i. c. 13: 'a gubernationis regimine regis nomen accipitur.' Papias, the Italian Grammarian of the eleventh century, gives the following definition in his Lexicon: 'Rex dictus eo quod regere debeat rem populi et salutem. Inter regem et tyrannum nulla prius erat differentia. Nunc in usu accidit reges vocare modestos et temperatos: tyrannos vero impios. . . . Rex a recte regendo dicitur: quod nomen peccando amittit.' The *Compendium Morale*, ff. 29a, 32b, besides citing Papias (u. s.) and the Canon Law (Decreti, Pars i. Dist. 21. Cap. i. *Cleros*), which, like Papias, is evidently derived from Isidore, u. s., gives a metrical version of the sentiment:—

> 'Cum rex a regere nomen dicatur habere,
> Nomen habet sine re, studeat nisi recta docere.'

For this the authority cited seems to be Isidore, Etym. lib. vii: but I have searched that book in vain for it. Cf. Political Songs, ii. 231:—

> 'O rex, si rex es, rege te vel eris sine re rex;
> Nomen habes sine re, nisi te recte regas.'

In N. L. N. i. c. 7 (Works, p. 70) Fortescue applies the distinction as he does here, to the case of Nimrod.

robustus venator.] In spite of the devotion of the Middle Ages to the mimic war of the chase, an evil association seems to have clung to the name of *hunter*, partly arising perhaps from this very passage of Genesis. Thus Fortescue's contemporary Gascoigne, in his *Liber Veritatum* (ed. Rogers, p. 224), after quoting St. Jerome's interpretation of Bethsaida as meaning 'domus venatorum,' continues: 'In domo enim venatorum et in ipsis venatoribus sunt plura sæpe peccata sanguinaria, sc. voluptas, qua delectantur videndo effusionem sanguinis et pœnam animalis morientis, et eciam in vanis et in turpibus sæpe inordinate delectantur; et rebus suis et tempore sæpe abutuntur, inferendo mala et nociva rebus et pasturis aliorum. Quantum possum in mea recolere memoria, nunquam, sc. in scriptura, venatorem in bonam partem legi.' It is one of the many beautiful traits in Henry VI's saintly character that he had a strong aversion to the cruelty of field sports: 'nec cædi innocui quadrupedis aliquando voluit interesse' (Blakman, in Hearne's Otterbourne, p. 302). In Rot. Parl. iii. 489 a there is a curious petition presented by the Commons on behalf of the Abbot of Newnham in Devonshire against Sir Philip Courtenay: one of the charges against him being that he had detained two of the Newnham monks and forced them to hunt and hawk 'against their order.' To Chaucer's Monk this would have been no great hardship; for he was, we read,— Evil associations connected with the chase.

> 'An out-rydere, that lovede venerye;
> . . . . . .
> He 3af nat of that text a pulled hen
> That seith, that hunters been noon holy men.'
> Canterbury Tales, Prologue, ll. 165 ff.

The other side of the question is given by the Pseudo-Aquinas, *De Regimine*, ii. c. 6: 'Venatura . . . valet ad robur acquirendum corporis, et conservandam sanitatem, et cordis vigorandam virtutem, si temperate utamur.' For a vehement tirade against hunting, cf. John of Salisbury, *Policraticus*, i. c. 4.

Belus that was first callid a kynge, aftir hym is sone Ninus.] The authority for this is St. Augustine, *De Civ. Dei*, xvi. c. 17, as Fortescue himself points out, N. L. N. i. c. 8 (Works, p. 71; cf. ib. 163; N. L. N. ii. c. 46), where also he notes the discrepancy between the statement of Genesis x. 11, followed by St. Augustine, that Asshur founded Nineveh, and the view adopted (among others) by Aquinas, *De Reg. Princ.* i. c. 13, that Ninus was

the founder of it. Other passages in which St. Augustine mentions Belus and Ninus are *De Civ. Dei*, iv. c. 6, xvi. c. 3, xviii. c. 2. [For the early history of Assyria according to the mediæval authorities, see Higden, Polychronicon, II. xxix, 274 ff.] Belus was the first king because, as Fortescue says, N. L. N. i. c. 8, 'aliud est habere regnum, ut habuit Nembroth primus tyrannorum, et aliud est regnare, velut utcumque fecerat Belus primus regum.'

thair kyngdomes bethe than most resembled to the kyngedome of God.] Compare notes to Chapter i. (above, p. 179).

Fortescue and the Civil Law.

þe lawes seyn.] i. e. the Civil Laws. For Fortescue's respect for the Civil Laws see N. L. N. i. c. 32 (Works, p. 95), where he calls them 'nobilissimæ Leges illæ Civiles, quæ quasi totius mundi curam tamdiu egerunt.' And in the De Laudibus, cc. 7, 9, he speaks of them as (Leges), 'quæ per orbem percelebres sunt:' (quas) 'supra humanas cunctas leges alias fama per orbem extollat gloriosa.' This did not however prevent him from writing a work (the *De Laudibus Legum Angliæ*) expressly to prove the superiority of English to Roman Law in the points on which they differ. Professor Pollock has recently said, 'Had English Law been in its infancy drawn within the masterful attraction of Rome, . . . it is hardly too much to say that the possibility of comparative jurisprudence would have been destroyed. . . . English law . . . furnishes a holding-ground for criticism. In its absence nothing but some surpassing effort of genius could have enabled us to view the Corpus Juris from the outside' (Inaugural Lecture, pp. 13 f.). It is much to Fortescue's credit that he began this work of criticism and comparison.

Quod principi placuit &c., the principle of autocracy.

quod principi placuit legis habet vigorem.] This is from the Institutes of Justinian, lib. i. tit. ii. § 6: 'Sed et quod principi placuit, legis habet vigorem; cum lege regia quæ de ejus imperio lata est, populus ei et in eum omne imperium suum et potestatem concessit. Quodcumque ergo imperator per epistolam constituit, vel cognoscens decrevit, vel edicto præcepit, legem esse constat.' The authority for this is Ulpian in Digest. i. 4. 1. Gaius (i. 5) says, 'Nec unquam dubitatum est quin principis constitutio legis vicem obtineat' (Sandars' Justinian, pp. 82–3). So Dante of the mediæval emperor: 'Quello che egli dice, a tutti è legge' (Convito, iv. 4). Fortescue quotes this maxim no less than three times in the *De Laudibus*, cc. 9, 34, 35; and there, as here, he

regards it, rightly, as embodying the very principle of autocracy. In the last-named chapter he gives it a special reference to the arbitrary government of Louis XI. It has been aptly contrasted with the principle of that limited Germanic kingship from which English royalty is derived, as embodied in the words of Tacitus (Germ. c. 7): 'Nec regibus infinita aut libera potestas.' But Bracton, followed by Fleta and Thornton, gives a very different interpretation to the passage, whereby he almost makes it the foundation of constitutional government; Bracton, lib. iii. c. 9. § 3; cf. Fleta, lib. i. c. xvii. § 7; and Thornton, quoted by Selden, *Dissertatio ad Fletam*, cap. 3. § ii. Well may Selden (ut supra) say that he read this explanation 'non sine stupore;' and he quotes against it the quite unequivocal words of the Greek lawyer Harmenopulus, ὅπερ ἀρέσει τῷ Βασιλεῖ, νόμος ἐστὶν.

but aftirwarde whan mankynde was more mansuete, &c.] Note that Fortescue considers the institution of monarchy by election or compact, as a distinct advance in civilization as compared with the monarchy based on conquest.

the felowshippe that came in to this lande with Brute.] Story of Brutus and Geoffrey of Monmouth. Rede's Chronicle. This mythical history of Brutus, the great-grandson of Æneas, who was made to do duty as the eponymous hero of the Britons, comes directly or indirectly from the *Historiæ Regum Britanniæ* of Geoffrey of Monmouth. It is possible that Fortescue derived it from the *Nova Chronica de Gestis Regum Anglorum* of Richard Rede, of which the earlier chapters are little more than an abridgement of Geoffrey, often preserving his very words, and of which, as we know, Fortescue possessed a copy. (See above, p. 180.) [The authority on which this chronicle is assigned to Richard Rede is Foxe, Martyrology, ed. 1583, p. 783. The chronicle itself, as far as I can judge, is a mere compilation, and contains nothing which may not be found better elsewhere.] The fortunes of Brutus occupy the first book of Geoffrey's work. I do not find there anything about Brutus's election as king of Britain, though he is said to have been elected as leader by the enslaved Trojans before they quitted Greece (i. c. 4, ad init.). The first editor of the present treatise, Lord Fortescue of Credan, maintains that 'our Author does not affirm the Story of Brute to be true.' But nothing is less likely than that he should have disbelieved it. The way in which the fables of Geoffrey carried everything before them is one of the most curious facts in literary history. We find them turning Popularity of the fables of Geoffrey.

up in the most unexpected quarters: thus Henry IV founds his claim to the Scotch homage on the ground of the rights exercised over Scotland by Locrinus the son of Brutus (Aug. 1400; Rymer, viii. 155); the compilers of the Black Book of the household of Edward IV base their ordinances on the precedents of the households of Lud and Cassivelaunus (Ordinances of the Household, p. 17); while Cade in his proclamation characterizes Pole (Suffolk) as being 'as fals as Fortager' (i.e. Vortigern; Three Fifteenth Century Chronicles, p. 95). The University of Oxford owes its existence, at least indirectly, to the coming of Brutus (Anstey, Munimenta Academica, pp. xxvii, 367). William of Newburgh indeed characterizes Geoffrey as he deserves as an impudent impostor, 'impudenter fere per omnia mentitur' (ed. Hamilton, i. 5); and Higden (vide infra, p. 201) ventures to question his account of Arthur. But these are exceptions. And Higden himself repeats the story of Brute without any misgivings (Polychronicon, ii. 442 ff.). Vincent of Beauvais, *De Mor. Princ. Inst.* c. 2, traces the rise of the British Empire from Brutus (f. 91, r°). More interesting is the fact that he agrees with Fortescue in regarding England as one of the realms where monarchy arose by compact (u. s. c. 4. f. 93, v°): 'Si qui tamen eciam infidelium de consensu populorum in reges assumuntur, et fines proprios non excedunt, illorum regna jure stabilita sunt. Sic autem arbitrandum est de regno vel imperio Romanorum, . . . sic etiam existimandum est de regno Francorum, et etiam Anglicorum. . . . In omnibus enim hujusmodi plurimum valet ipsius auctoritas et consensus populi.'

Aristotle, *the philosopher.*

the philisopher.] This is Aristotle, who is always so called in mediæval writings, at least from the twelfth century onwards. Thus John of Salisbury (1110–1180) says of him: 'Tractavit quidem omnes philosophiæ partes, . . . sed præ ceteris sic rationalem (i.e. logic) redegit in jus suum ut a possessione illius videatur omnes alios exclusisse. Ita tamen in aliis viguit ut commune nomen omnium philosophorum antonomastice, id est, excellenter sibi proprium esse meruerit. Sicut enim urbs Romam, Maronem Poeta exprimit, sic et Philosophi nomen circa Aristotelem utentium placito contractum est' (Policraticus, vii. c. 6). This passage has been appropriated by Higden, iii. 358. I give Trevisa's translation of the last sentence: 'Þis is i cleped þe philosofre, as it were he þat bereþ þe prise of philosofres: so

Rome is i cleped þe citie, so Maro þe poete, and so Aristotle þe philosofre.'

M. Jourdain in his admirable work, *Recherches sur l'âge et l'origine des traductions latines d'Aristote* (pp. 3, 23, 28, 31, &c.), has shown that up to the end of the twelfth century only the logical works of Aristotle were known, and that on them his fame was based. But how effectually his reputation as a logician prepared the way for his reception as the monarch, not to say the tyrant, of the intellectual world, is shown by the above-quoted passage from John of Salisbury, who evidently regards Aristotle mainly as a logician, and who certainly was unacquainted with any but his logical works. With the thirteenth century began what M. Jourdain (u. s. p. 120) justly calls 'l'espèce de délire dont on se prit pour Aristote.' As his other works became known he came to be regarded more and more as representing the perfection of human reason, and his works as marking the utmost limit to which uninspired wisdom could attain. And what gave St. Thomas his great significance and value for the Middle Ages was the fact that he first effected a systematic conciliation and fusion of this highest product of purely human reason with the doctrines of the Church. Dante, who embodies no less thoroughly than St. Thomas himself the spirit of the Middle Ages, calls Aristotle 'the master of those who know' ('il Maestro di color che sanno,' Inferno, cant. iv. v. 131). And in the *Convito* he calls him 'that master of Philosophers' ('quello Maestro de' Filosofi,' iv. c. 8); 'the master of human reason' ('il Maestro della umana ragione,' iv. c. 2, cf. ib. 6); 'the glorious philosopher to whom Nature most revealed her secrets' ('quello glorioso Filosofo, al quale la Natura più aperse li suoi segreti,' iii. c. 5; cp. the phrase of Waterhous, who calls Aristotle the Secretary, i.e. confidant of Nature; p. 407). 'His opinion is *divine*' ('la divina sentenzia d'Aristotile,' iv. c. 17). He holds the same position in the intellectual world that the emperor holds in the world of politics (iv. c. 6), and for ordinary people his authority, without his arguments, suffices (iii. c. 5). Bishop Pecock in this, as in other points, had the courage to revolt against the prevailing opinions of his day: 'Aristotel was not other than an encercher for to fynde out trouthis, as othere men weren in his dayes and now after his daies ȝit hidirto ben. And he failide in ful many poyntis both in natural philosophie and in moral philosophie, as shal be maad open in other placis,

Infatuation of the Middle Ages for Aristotle.

Pecock ventured to dispute his authority.

and as ech large encercher of trouthis into this present day hath failid' ('Follower to the Donet,' quoted in Pecock's Repressor, ed. Babington, p. xxxvii). And this was one of the points which Pecock's adversary John Bury brought up against him: 'Non mittis . . . ad Platonem, non ad Aristotelem qui principes in doctrina morum ab hominibus computantur. . . . Moralis igitur philosophia . . . in solo tui pectoris domicilio quiescit' (ib. 604).

On the general question of Fortescue's Aristotelian quotations something will be found in the Introduction, Part III, above, pp. 99 f.

Source of the quotation.

every comunalte unyed of mony parties must nedis have an hed.] This saying of Aristotle is quoted by Fortescue in N. L. N. ii. c. 42: 'in hiis quæ sunt ad invicem ordinata oportet semper esse aliquod primum et dirigens, ut Philosophus tradit in primo Politicorum' (Works, p. 159). In this form he probably took it from the Pseudo-Aquinas, *De Regimine*, iii. c. 9, and not (as Lord Carlingford thinks) from the *Summa*, Prima Pars, Quæst. xcvi. Art. iv, for Fortescue's language tallies much more exactly with the former than with the latter passage. In the *De Laudibus*, c. 3, the same sentence is given in a different form: 'Quo primo Politicorum dicit Philosophus quod quandocunque ex pluribus constituitur unum, inter illa unum erit regens, et alia erunt recta.' In this form the quotation comes from the *Auctoritates* (see Introduction, Part III, u. s.) of the first book of the Politics. The original is: *ὅσα γὰρ ἐκ πλειόνων συνέστηκε καὶ γίνεται ἕν τι κοινόν, . . . ἐν ἅπασιν ἐμφαίνεται τὸ ἄρχον καὶ τὸ ἀρχόμενον* (Pol. I. ii. § 9). Dante quotes the same passage in the *Convito* (iv. c. 4) in support of his theory of the necessity of a universal empire. For the sentiment compare Aquinas, *De Regimine*, i. c. 1: 'Necesse est in hominibus esse per quod multitudo regatur.' 'Oportet esse in omni multitudine aliquod regitivum.' So in the Black Book of Edward IV's household: 'In quolibet toto necesse est unam partem formalem et predominantem [esse], a qua totum unitatem habet' (Ordinances of the Household, p. 55). It was one of the common charges against the Lollards that they wanted to set up an anarchic and headless system. In a pardon granted to one John Wykham, a Lollard, in 2 Hen. V (Nov. 6, 1414), it is alleged that it was the intention of the Lollards 'quamplura Regimina, secundum eorum voluntatem, infra Regnum prædictum, quasi Gens sine capite, . . . ordinare' (Rymer, ix. 171). And Whethamstede repeats the charge in some of his insupportable verses:—

Parallels to it.

'Regnorum culmen, regnandi despicit omen,
Retrogradum regnum optat et acephalum.'
Amundesham, i. 230.

Policia dicitur a poles....et ycos &c.] This marvellous derivation is found almost verbatim in N. L. N., i. c. 23 (Works, p. 85): '*policia* namque a polos dicitur quod est *pluralitas*, et ycon *administratio*, quasi *regimen plurium consilio ministratum*.' Lord Carlingford pays Fortescue the compliment of Greek type, printing πολυς and ικων. But, as I do not believe that Fortescue knew a word of Greek, I have given the passage as it stands in the Oxford MS. of the first part of the N. L. N. (MSS. Laud. Misc. 585, p. 37). Lord Fortescue of Credan (or Hearne who transcribed the work for him), not understanding the passage, gives it without any MS. authority, as follows: 'Dominium politicum dicitur quasi Regimen, plurium Scientia, sive Consilio ministratum.' In this he is followed by Lord Clermont. There is a similar, though less violent, derivation of 'politia' in Pseudo-Aquinas, *De Regimine*, iv. c. 1: 'Tale regimen *politiam* appellant, a *polis*, quod est pluralitas, sive civitas, quia hoc regimen proprie ad civitates pertinet, ut in partibus Italiæ maxime videmus.' Whence Fortescue got this derivation I do not know. The source of many mediæval etymologies is to be found in Isidore; and very marvellous they are as a general rule.

Derivation of *policia*.

Isidore the source of many mediæval etymologies.

The kynge of Scottis, &c.] In this reference to the Constitution of Scotland we may perhaps trace the influence of Fortescue's wanderings in exile. For his residence in Scotland, see his life in the Introduction, Part II, above pp. 56–62. On the state of Scotland at this time something will be said in the notes to Chapter ix. below. On the mediæval Constitution of Scotland, see Hallam, Const. Hist. chap. 17, and the Lords' Reports on the Dignity of a Peer, No. I, Division 5.

Constitution of Scotland.

In its main features the Scotch Constitution followed the lines of the English, but differed in some important particulars. 1. The Parliament was composed entirely of tenants-in-chief. No landowners attended, either in person or by their representatives, except those who held their lands immediately of the Crown; no boroughs were represented except the royal burghs. 2. The smaller tenants-in-chief, or lesser barons, attended in person, as they did in England up to Henry III's time. In 1427 they were allowed to send representatives (or commissaries as they were called) for each sheriffdom.

Comparison with that of England.

Later statutes fixed the limit of landed property below which a baron or tenant-in-chief was not to be obliged to attend Parliament in person. But whether attending in person or by their commissaries, these lesser barons ranked among the second, and not (as in England) among the third estate. This lasted till the revolution of 1688, after which, on the abolition of episcopacy, the commissaries of shires were made into a separate estate in place of the prelates. 3. Consequently the third estate consisted only of the commissaries of the boroughs. 4. The three estates or communities ('tres communitates') voted promiscuously, and not (as in England) in two separate houses or chambers. Thus we see that in Scotland the parliamentary constitution was based entirely on tenure-in-chief, whereas in England the reforms of Edward I. had excluded the influence of tenure from that constitution. And, partly in consequence of this, the Scotch Parliament was wanting in two main elements of strength which the English Parliament possessed, viz. the close union which existed between all classes of land-owners below the rank of baron, irrespective of tenure; and secondly, the combination in the popular branch of the legislature of the two strongest interests in the country, land and commerce. But in truth the limitations of the royal power in Scotland were always rather practical than legal, and consisted much more in the power of the great lords than in the constitutional action of the parliaments. Still Fortescue is no doubt right in classing the Scotch king, as he does here, among limited monarchs.

Diodorus Siculus.

Diodorus Siculus saith in his boke De priscis historiis, &c.] Diodorus Siculus, the Greek historian, finished his great historical work, which he himself called *Bibliotheca Historica*, in the year 8 B.C. Poggio (1380–1459) made a Latin translation of the first five books, which was printed at Bologna in 1472, and reprinted several times at Venice. That this was the translation used by Fortescue may be seen by any one who will compare the extracts from the translation given below with the extracts from Diodorus given by Fortescue in *De Laudibus*, c. 13. This is confirmed also by the title under which Fortescue quotes the work of Diodorus, *De priscis historiis*. The heading in the edition of 1472 is, 'Diodori Siculi historiarum priscarum a Poggio in Latinum traducti liber primus incipit.' [It should be noted that the first book of Diodorus is divided into two sections, which by Poggio and

Poggio's Translation.

Fortescue are reckoned as separate books. In the early editions and translations of Diodorus there are no divisions of chapters. These I have taken from the edition of Müller, Paris, 1842.] The passage about the Egyptian kings is in Lib. i. (ii.) cc. 69, sqq. Poggio's translation runs as follows: 'Asserunt Egyptii . . . fuisse . . . optimas ab se institutas leges. Quorum maximum ferunt esse argumentum: annis amplius tribus milibus et septingentis indigites reges Egypto imperasse: Eamque provinciam cæterarum orbis esse fœlicissimam: quæ nullo potuissent pacto fieri nisi optimis moribus ac legibus vixissent, eruditique omni doctrinarum genere fuissent. . . . Primum Egyptii reges vitam, non aliorum regnantium quibus voluntas pro lege est, traducebant licentia; . . . Sed veluti privati tenebantur legibus: neque id egre ferebant, existimantes parendo legibus se beatos fore. . . . Hac usi erga subditos justitia omnium benevolentiam . . . assecuti sunt.' Among the 'reawmes of Affrike' may be mentioned Ethiopia, which Fortescue in the *De Laudibus* specially quotes. Diodorus' account of the Ethiopian Constitution is to be found in Lib. iii. (iv.) cc. 5, sqq. Poggio translates: 'Æthiopum leges quædam non parum ab reliquarum gentium legibus maxime vero circa regum electionem differunt. Nam sacerdotes optimos ex se ipsis seligunt. Quem vero ex eis deus more quodam bacchantium circumdelatus cepit, hunc regem populus creat. . . . Assumptus in regem vitam ducit statutam legibus, omniaque agit juxta patrios mores; neque premio neque pœna afficiens quenquam preter traditam a superioribus legem.' About the constitution of the 'londe of Libie' I do not find much in Diodorus. What there is, is in Lib. iii. (iv.) c. 49. Diodorus there divides the Libyans into four tribes, and into three classes, viz. the nomad or pastoral, the agricultural, and the predatory Libyans. The two former classes 'regibus parent, vitam non omnino agrestem agentes, neque ab humanitate alienam. Tertii neque ullis subsunt regibus neque ullam latrociniis semper intenti justitiam norunt.' In regard to the Sabeans Fortescue has either misunderstood or misquoted his author. This is the account of the Sabean Constitution given by Diodorus, iii. (iv.) cc. 46–7: 'Sabei, gens Arabum populosissima, . . . felicem Arabiam incolunt . . . Reges habet (gens) ex generis successione . . . Beatam . . . vitam habere videntur, quod reliquis imperantes rationem ab se gestorum minime coguntur reddere. Infelicem vero, quod nunquam regiam exire queunt. Nam si palam prodirent, a turba

The Egyptian Kings.

Ethiopia.

The Libyans.

The Sabeans.

hominum lapidibus veteri quodam deorum responso obruerentur.' This so far from being a limited monarchy, seems to be an absolute monarchy tempered only by perpetual confinement as an alternative to stoning. Fortescue quotes Diodorus also in N. L. N. i. c. 7, ii. c. 22 (Works, pp. 70, 137).

wich maner . . . lordshippe . . . Diodorus praisith.] This probably refers to those praises of the Egyptian Constitution given above; which however represent the views, not of Diodorus, but of the Egyptians themselves.

it is not only good for the prince, &c.] On the benefits which the ruler, according to Fortescue, derives from the limitation of his power, see notes to Chapter vi. below, pp. 217–9.

Fortescue's arguments in favour of Constitutional Government.

the people . . . resseyue thair bi such justice as thai desire thaim self.] Fortescue here lays his finger on what must always be a main argument in favour of popular government. In N. L. N. i. c. 25 (ad finem) he gives another excellent reason for his preference of limited to absolute monarchy, namely that the risk from a bad king is so very much less in the one case than in the other: 'Vos subditi Regis regaliter et politice preessentis consolamini quod, si rex vester taliter insolescat, liberis ad hoc, ut alius, ipse non gaudet habenis' (Works, p. 87; cp. also *De Laudibus*, c. 9, quoted in notes to Chap. vi. below, p. 218). The Pseudo-Aquinas points out the advantage of self-government with special reference to the administration of justice: 'non est materia scandali puniendo, quia tales leges ab ipsa multitudine sunt institutæ.' *De Regimine*, iv. c. 8.

CHAPTER III.

Title.] L. is the only MS. which does not begin a new chapter here.

þe Ffrenche kynge reignith vppon is peple dominio regali.] For the frequency with which Fortescue institutes comparisons between things English and French, see Introduction, Part III, above pp. 100–1. In the *De Laudibus* and in the present work, which were both written either during or subsequent to Fortescue's exile on the Continent, the author evidently regards the French

king as the type of the absolute monarch. The strongest passage on the tyrannical government of Louis XI occurs in *De Laudibus*, c. 35 (ad finem), where after enumerating various odious features of that government, the oppressions of the standing army, the arbitrary financial exactions, the extra-judicial condemnations, the secret executions, he continues thus in his address to Prince Edward of Lancaster: 'Etiam et alia enormia, hiis similia, ac quædam hiis deteriora, dum in Francia et prope regnum illud conversatus es, audisti, non alio quam legis illius colore, detestabiliter, damnabiliterque perpetrata.' The *lex illa* under colour of which these things are done is the maxim that 'quod principi placuit legis habet vigorem.' As early as 1280 this maxim had been enunciated by the French jurist Beaumanoir in the words, 'Qui lui plait à faire, doit être tenu pour loi' (cited by Martin, Hist. de France, iv. 568). France the type of an absolute monarchy.

Seynt Lowes . . . . nor eny of his progenitors &c.] In this passage Fortescue certainly underestimates the amount of arbitrary rule which the French kings prior to Charles VII allowed themselves in the matter of taxation, though he is right in regarding the reign of the latter king as the period of a decisive constitutional change. With 'Saint Louis and his progenitors' we are not in reality concerned; they cannot have imposed taxes with the consent of the Three Estates, for the Estates-General did not then exist, though Saint Louis seems occasionally to have admitted representatives of the towns to his councils (Picot, Histoire des États Généraux, i. 19). Fortescue is right as to Louis IX, in so far as he, unlike most of his successors, was scrupulously conscientious in the use which he made of his taxative powers (cf. Martin, Hist. de France, iv. 295). But the first monarch to appeal to an assembly of the Three Estates was Philip IV (the Fair). It has generally been assumed that the first assembly of Estates was that which Philip summoned in 1302 to support him in his struggle against Boniface VIII, and that the first Estates summoned for financial purposes were those of 1314. M. de Studler however (quoted by Martin, v. 123) thinks that he has discovered instances of assemblies of the Estates for financial purposes going back to 1295. [This if correct would afford a curious coincidence with English parliamentary history, for that is the year of Edward I's great model Parliament.] Anyhow, these applications to the Estates did not prevent Philip IV from imposing taxes by his own arbitrary will. As M. Martin says (v. 122), the French kings as a rule only Arbitrary taxation of the French Kings. First Estates-General.

applied to the Estates for what they could not take in other ways. A tax, imposed in 1292, and continued apparently through the reign, gained from its special odiousness the name of maltolt (Martin, iv. 399, 502, 510–1). It is said that Louis X promised to levy no taxes without the consent of the Three Estates, and that this concession was confirmed by Philip VI in 1338. But for neither fact is the authority as good as could be wished (Picot, u. s., pp. 29 f.; Hallam, Middle Ages, i. 227 f.). Anyhow the promises, if made, were indifferently kept. Under John the Estates played a great part in financial as in other matters. But their constitutional efforts perished in the reaction which followed the murder of Marcel; and after the peace of Bretigni the arbitrary exactions reappear (Hallam, u. s., p. 232; Martin, v. 231). The taxes originally imposed for the ransom of King John were prolonged and augmented to Charles V by the Estates of 1367 and 1369, but after the expiration of the last term of one year for which they had been granted, the king continued to raise and even increased them by his sole prerogative (Picot, u. s., pp. 186–8, 200–207, 227; Martin, v. 277, 303–5; Hallam, u. s.). M. Martin justly regards this fiscal despotism as a terrible set-off against the inestimable services which Charles the Wise rendered to his country. 'He restored national independence, but destroyed liberty both then and for the future' (u. s., p. 305). On his death-bed he abolished the taxes which he had imposed without the consent of the Estates, 'qui moult me grèvent et me poisent en courage' (ib. 332). And so great was the popular excitement caused by the report of this abolition, that the government of Charles VI in an assembly of notables (not of Estates, as Hallam, p. 232, appears to think) was forced to confirm it. But to carry on the government without these taxes, or at least a considerable proportion of them, was impossible. Unfortunately neither the rulers nor the people of France at this juncture saw any middle course between the total abolition of these taxes and their unconstitutional imposition. And the people must share with their rulers the responsibility for what followed. In 1382 the taxes were re-imposed by a simple act of power, for thirty years they were levied without any vote of the Estates; and arbitrary taxation combined with almost every other form of public evil to make the reign of Charles VI what Sully called it, 'the grave of good laws and good morals to the French' (Picot, u. s., pp. 237–250, 316). From this rapid survey it will be

seen that it is impossible to agree with Fortescue that 'many of St. Louis' successors' observed the rule of not imposing taxes 'without the assent of the three estates.'

þe iij estates wich . . . bith like to the courte of the parlement in Ingelonde.] Commynes from the French side makes the same comparison. Speaking of England he says: 'les choses y sont longues: car le Roy ne peult entreprendre une telle œuvre sans assembler son parlement, qui vault autant comme les trois Estatz' (Liv. iv. c. 1). Roughly speaking the comparison is a just one. But to point out all the differences between them in composition, procedure, history and ultimate fate would require a much longer note than can be attempted here.

Establishment of the standing army and of the permanent *taille* in France, 1439.

in to late dayes that . . . the iij estates durst not come to gedre, etc.] This refers to the establishment of the standing army and of the permanent *taille* at the Estates-general of Orleans in 1439. Fortescue is however wrong in attributing the cessation of the meetings of the Three Estates to fear of the English. In the earlier years of Charles VII's reign the Estates met frequently; and their patriotic self-sacrifice combined with the enthusiasm created by Joan of Arc to effect the regeneration of France. It was rather the exhaustion which followed these efforts, the weariness induced by these frequent meetings, together with the desire to put a term to the external and internal evils from which France was suffering, which led the Estates to surrender to the Crown the two most essential safeguards of liberty, control of the purse, and control of the army. Fortescue is therefore wrong further in regarding, as apparently he does regard, the imposition of the permanent *taille* as an act of royal usurpation. It was the deliberate act of the Estates themselves, whereby they committed political suicide, laid the foundation of the despotism of Louis XI and his successors, and sacrificed the whole constitutional future of France to the conveniences and animosities of the hour. The truth was not long in coming out. In February, 1442, an assembly of the nobles ventured to represent to the king 'comment telles tailles et impositions se doivent mettre sus, et imposer; et appeller les seigneuries, et les estats du Royaume;' and received for answer, 'Quant aux tailles le Roy . . . de son auctorité Royal . . . les peut mettre sus, . . . et n'est j'a nul besoing d'assembler les trois estats pour mettre sus les dictes tailles, car ce n'est que charge, et despence au pauvre peuple' (Monstrelet, ed. 1595, vol.

Remonstrance of the nobles, Feb. 1442.

ii. f. 194). Fortescue does not dwell here, as in the corresponding chapter of the *De Laudibus* (c. 35), on the evils caused by the other great measure of 1439, viz. the establishment of the standing army. But on both these points his judgement is confirmed by that of men so opposed to one another as Commynes the panegyrist, and Basin the denigrator of Louis XI; the former of whom says with reference to these measures, 'Le roy Charles VII fut le premier . . . qui gaigna ce point d'imposer tailles à son plaisir, sans le consentement des Estatz de son royaulme; . . . mais ad ce qui est advenu depuis et adviendra, il . . . mist une cruelle plaie sur son royaulme, qui longuement seignera' (Liv. vi. c. 6); while Basin says, 'in hanc miseriam tributorum atque exactionum extremam servitutem regnum Franciæ . . . sub prætextu necessitatis . . . devolutum est, ut omnes regni incolæ ad nutum regis . . . talliabiles publice prædicentur, de factoque immanissime tallientur' (i. 171–2). The authorities for this note will be found in Picot, u. s. pp. 316–340; Martin, vi. 421–3.

Testimony of Commynes and Basin.

wolde not sett any suche charges . . . uppon the nobles.] The exemption of the French nobility from taxation was due to the fact, that the military service which they discharged in person was originally considered as exonerating them from any further contributions to the necessities of the state. Philip Augustus once ventured to break through this rule, but the experiment seems not to have been repeated (Hallam, Middle Ages, i. 212). The exemption continued long after any rational ground for it had ceased to exist; and the discontent which it occasioned was one cause among many of the French Revolution. Something of the same kind, though in a mitigated form, existed for a time in England. During the whole of the Middle Ages the barons and knights of the shire taxed themselves at a lower rate than did the representatives of the boroughs and cities. (See the table in Gneist, Verwaltungsrecht, i. 410.) The fact that the barons and knights always taxed themselves in the same proportion shows that in England the tendency existed which as we have seen (supra, p. 190) prevailed in Scotland, and generally on the Continent, for the representatives of the lesser landowners to rank themselves with the second, rather than with the third Estate. Happily in England this tendency was defeated; and the imposition of taxation became the act not of separate classes, but of the whole nation.

Exemption of the French nobles from taxation.

Parallel from English History.

so augmented the same charges.] At the death of Charles VII the *taille* stood at 1,800,000 livres per annum, while the standing army consisted only of 1700 men-at-arms; the infantry being supplied by the *francs-archers*, of whom each parish was bound to furnish one. In Louis XI's time this number seems to have been raised to two, for in the *De Laudibus*, c. 35, Fortescue says: 'quelibet villa semper sustinet sagittarios duos ad minus, et alique plures in omni apparatu, et habilmentis sufficientibus ad serviendum regi in guerris suis, quociens sibi libet eos summonere, quod et crebro facit.' They were freed from payment of all imposts; hence their name, and this was the only expense which they occasioned to the state in time of peace. In time of war they received pay at the rate of four *livres tournois* a month. At the death of Louis XI the taille stood at 4,700,000 livres per annum, the number of men-at-arms had been raised to 5000, while in place of the francs-archers, abolished by Louis XI after the battle of Guinegate in 1479, there was a permanent force of infantry consisting of 25,000 men. (See Martin, vi. 381, 430–1; vii. 31, 139, 143; Commynes, Liv. v. c. 19; Liv. vi. c. 6.)

Increase of the *taille* and standing army. The *francs-archers*.

the same commons be so impouerysshid, &c.] On the state of the French peasantry, cf. *De Laudibus*, c. 35. The contrast which Fortescue here draws between the natural advantages of France and the misery of the peasantry is one which struck all observers from his time down to the French Revolution. Heylin (1600–1662) says: 'The soil is extraordinary fruitful and hath three loadstones to draw riches out of other countries: corn, wine, and salt. . . . Notwithstanding the fruitfulness of the soil, miserable is the condition of the peasant by reason of the intolerable taxes and the great and uncertain rents which are set upon them by the landlords. There are many among them who farm thirty, forty acres of wheat and vines, who never drink wine or eat good bread throughout the year' (Cosmography, ed. 1652, p. 147). But the lowest depth both of misery and despotism was reached when a French minister (Foulon), on its being 'objected to some finance-scheme of his, "What will the people do?" made answer, in the fire of discussion, "The people may eat grass:" hasty words which fly abroad irrevocable, and will bring back tidings!' (Carlyle, French Revolution, Part i. Bk. iii. ch. 9; cf. ib., Bk. v. ch. ix.) See also notes to Chap. x. pp. 267–8, below, and the references there given.

Condition of the French peasantry.

made of grete caunuas.] Among the estimated yearly expenses

Canvas.

of the household of George Duke of Clarence in 1469 occurs the following item: 'Canvas 200 elles at xl. s.—£4;' i.e. the price of canvas was rather less than 4*d.* per yard (Ordinances of the Household, p. 103). In an inventory of an Oxford scholar's goods in 1448 occur the following items: '*Item*, unus "*canveys*" pretium vj.*d.*' '*Item*, "*canveise*" pretium iij.*d.*' (Munimenta Academica, p. 579). In Cal. Rot. Pat. p. 237 a, is a grant for life to one Robert Sherwynde of 'officium mensurarum pannorum laneorum ac *canves*' infra civitatem London'.' Waterhous, speaking of this same canvas, says: 'This I myself have seen the peasants of *France* in, God knows, with wooden shoes and pitifull other accoutrements' (p. 442). Cf. *De Laudibus*, ed. Amos, p. 132, note.

French Scute.

Scute.] The French scute, or crown, was worth 3*s.* 4*d.*, or half an English noble, which was 6*s.* 8*d.* Thus in the English version of the Treaty of Troyes, given in Rymer, ix. 916, occurs the following article: 'The forsayd Katerine shall take and have Douer in our Roiaulme of Englond, as Quenes of Englond hedir toward were wont for to take and have; That is to saye, to the Somme of forty Mill. Scutes be Yere; of the whiche Tweyne algates shall be worth a Noble Englyshe.' And in the confirmation of this article in the first Parliament of Hen. VI: 'al somme de xl. M. Escutes, des queux deux toutdys serroient del value d'un noble Engleterre.' Rot. Parl. iv. 183 b.

Inability of the French peasants to fight.

not able to fight, &c.] Macchiavelli in the sixteenth, and Bacon in the seventeenth century made the same observation: cf. the former's *Ritratti delle Cose della Francia*, written after his last legation in France in 1510; and Bacon's essay, 'Of the true Greatness of Kingdoms.'

except his nobles, &c.] And the nobles had proved but a poor defence at Crecy, Poitiers, and Agincourt. Added to which, it was Louis XI's policy to dispense as much as possible with the military service of the nobles, whom he allowed to compound for it by payment of a sum of money (Martin, vi. 139, 143). We have seen already how Louis XI. abolished the free archers and substituted for them a standing body of infantry. The nucleus of this new army was a band of 6000 Swiss, who were lent to Louis by the Cantons (Martin, u. s.). Ægidius Romanus, *De Regimine*, III. ii. 6, makes it one of the points in which the tyrant differs from the true king, 'quod tirannus non curat custodiri a civibus sed ab extraneis.' 'A tyraunt wol not haue to warde of his bodye citeseyns

Foreign mercenaries.

i bore in his owne reigne, but he takeþ to straungers al þe warde and kepyng of his body' (MS. Digby, 233, f. 135 d). Cf. St. Thomas, quoted by Baumann, Staatslehre, &c., p. 133.

Scottes.] All readers of Quentin Durward will remember the Scots Guard of Louis XI, in which Quentin was enrolled under the auspices of his uncle. So great became the fame of this celebrated guard that in later times its original institution was attributed to Charles the Fat, and even to Charles the Great. Its real origin is probably to be traced to the reign of Charles VII, and it is said to have been first formed out of those Scotch auxiliaries who survived the battle of Verneuil (Aug. 17, 1424), in which Bedford inflicted such a crushing defeat on a mixed force of French and Scots. Before this however, viz. in 1401–2, Louis of Anjou had taken into his pay a small Scotch guard under the command of the Earl of Crawford, with a view to fortifying himself against his rival the Duke of Burgundy. Commynes mentions the Scotch Guards as attending Louis XI to the siege of Liège, where they showed themselves 'bien bonnes gens;' Liv. ii. c. 12 (see F. Michel, Les Écossais en France, i. 29f., 101–2; Burton, Hist. of Scotland, ii. 398). In Appendix D to Rymer, pp. 167–9, there is a list of letters of naturalization granted to members of the Scotch Guard from March 1452 to Feb. 1474.

The Scots Guard.

Its origin.

Spaynardes, Arrogoners.] The Arragonese seem therefore not to be included under the term Spaniards, the Castilians being regarded as Spaniards *par excellence*. Cf. infra, Chapter ix, where Fortescue speaks of the king of Castile as king of Spain; and note ad loc., pp. 261, 264, below.

men of Almeyn.] This term includes, if it does not principally refer to, the Swiss. The Swiss cantons were legally included in the German Empire till the peace of Westphalia in 1648. The exact title of the league of the Forest Cantons which became the basis of the later Swiss Confederation was 'The Old League of High Germany.' Commynes, Liv. v. c. 1, speaks of 'ces vielles ligues d'Alemagne, qu'on appelle Suisses.' The name *Swiss* is in fact simply an extension to the whole confederation of the name of the Canton of Schwytz; an extension due to the fact that it was Schwytz which led the Confederacy in the struggle against Zürich, allied with the ancient enemy Austria, 1436–1450 (Weber, Weltgeschichte, ix. 72 ff.; Dändliker, Hist. du peuple Suisse, pp. 86 ff.).

The Swiss.

Englonde, wich is an Ile, . . . mey not lyghtly geyte

Insular position of England a source of danger.

soucore, &c.] From this passage we see that the feeling of our forefathers towards the 'silver streak' was very different from our own. Cp. Rot. Parl. v. 214 a, vi. 4 a, where the fact that 'this Lande is environed with ennemyes' is given as the motive for grants of liberal subsidies. The insular position of England, so far from being regarded as a source of strength, was considered a great element of weakness. The other point of view is however sometimes found. In the 'Libel of English Policy' it is said: 'Kepe than the see, that is the walle of Englond' (Political Songs, ii. 202). Capgrave uses the same metaphor, but he says that England's enemies have scaled this wall (De Illustr. Henr. pp. 134–5). Of the unprotected state of the English coasts during the Lancastrian period something will be said in the notes to Chap. vi. below, pp. 234, 237. But, apart from the experience of his own times, Fortescue need hardly have gone back to the days of the Picts and Scots to prove the liability of England to external attack. To say nothing of the Danish and Norman invasions, the French had made numerous attacks on the English coasts at the end of Edward III's reign, and at the beginning of the reign of Richard II (Nicolas, Hist. of Royal Navy, ii. 125, 132, 134, 260–2). In 1385–6 a formal invasion of England was projected, which caused the utmost alarm, though ultimately it came to nothing (ib. 296 ff.). It was the fortifications erected by Henry VIII out of the funds derived from the dissolution of the monasteries which first secured the English coasts from insult (Froude, Hist. of England, iii. 69–72); though Mr. Rogers denies that what Henry did was of any value (Work and Wages, p. 325).

Attacks on the English coasts.

wich was well provid in the tyme of the Bretons.] All this pretended history is, like the story of Brutus in Chapter ii, derived mediately or immediately from Geoffrey of Monmouth, Hist. Brit. vi. cc. 1–5. In Fortescue's copy of Rede's Chronicle the corresponding portion of history occupies folios 11, 12.

litle Bretayn.] The origin of this name is thus given by Rede: 'Maximus (Geoffrey calls him Maximianus) . . . Armoricum regnum expulsis incolis sibi subjugavit, quod et dedit Conano. . . . Hic omnem electam juventutem milicie Britanice posuit in Armorica, quam minorem Britanniam appellavit.' f. 11, r°; cf. Geoff. Mon. v. c. 14: 'fecitque alteram Britanniam.' The 'Libel of English Policy' calls Brittany both 'Lytell Bretayne' and 'Pety Bretayne' (Political Songs, ii. 164, 169).

gret Artour was one of thair issue.] Arthur, according to Geoffrey, was the son of Uther Pendragon, the youngest of the three sons of Constantinus. His birth is told in Geoff. Mon. viii. cc. 19, 20, his accession in ix. c. 1; cf. Rede, ff. 16 ff. I have already mentioned (above, p. 186) Higden's wholesome scepticism as to Geoffrey's accounts of the exploits of Arthur. Higden grounds his doubts upon the silence of Gildas and Bede; Polychron. v. 336. Higden's translator Trevisa is much scandalized at this scepticism. A similar argument would prove that many things related by St. John were untrue, because they are not related by any of the other Evangelists; and 'he were of false byleve þat trowede þat þat argument were worþ a bene.' Trevisa admits however that 'it may wel be þat Arthur is ofte over preysed, and so beeþ meny oþer.'

Arthur.

Higden's scepticism.

Trevisa's refutation of Higden.

and therfore the peple therof be not in such peynurie, &c.] On the condition of the English commons at this time see the notes to Chapter xii. infra. Here may be noted that Fortescue attributes the greater prosperity of the English commons, as compared with the French, to the greater amount of constitutional liberty which they enjoyed.

ut ex fructibus eorum, &c.] Matth. vii. 16, 20. Fortescue has prefixed an *ut* to the quotation which is not in the original, thus throwing the construction out of gear. Accordingly several MSS. read *cognoscatis*.

CHAPTER IV.

a kynges office stondith in ij thynges, &c.] Both Glanville and Bracton begin their respective works with a very similar sentiment. The former's words, repeated almost verbatim by the author of Fleta, are: 'Regiam potestatem non solum armis contra rebelles insurgentes oportet esse decoratam, sed et legibus, ad subditos et populos pacifice regendos, decet esse ornatam.' Bracton says: 'In Rege qui recte regit, necessaria sunt duo hæc, arma videlicet et leges, quibus utrumque tempus, bellorum et pacis, rectè possit gubernari.' Aquinas, *De Regimine*, says: 'Triplex cura imminet regi. Primo quidem de successione hominum, . . . qui diversis officiis præsunt. . . . Secundo autem ut suis legibus et præceptis

Twofold duty of a king.

Testimony of mediæval writers; Glanville.

Bracton.

Aquinas.

. . . homines sibi subjectos ab iniquitate coerceat. . . . Tertio . . . ut multitudo sibi subjecta contra hostes tuta reddatur' (i. c. 15).

Ægidius Romanus.

And Ægidius Romanus, in a passage which is closely modelled on the above chapter of Aquinas, says that there are three main obstacles to peace, which arise 'unum . . . ex naturâ; . . . aliud . . ex perversitate civium; tercium . . ex malevolencia hostium' (De Regimine, III. ii. 8). Or, as his translator expresses it, 'On þerof springeþ as it were of kynde, þe oþer of shrewednesse of men, þe þridde of euel wille of enemyes;' f. 137 b.

Roger of Waltham.

And the author of the *Compendium Morale* quotes to the same effect, Innocentius Extravag., *De supplicio negligentium prælatorum*, cap. *Grandi*: 'Nota justas causas dandi curatorem regibus, videlicet si regnum suum nesciunt defendere, vel in eo justiciam et pacem servare;' f. 38 c.

Testimony of public documents.

The same doctrine is frequently laid down in Parliament, and in public documents. In the Parliament of 1427 Archbishop Kemp, the Chancellor, in his opening discourse, 'asseruit . . . debitum Superiorum tria specialiter continere, videlicet, suos Subditos ab Inimicorum insultibus exterius protegere et defensare; pacem et tranquillitatem inter eos interius conservare; ac tertio, debitum Justicie complementum eis equanimiter ministrare' (Rot. Parl. iv. 316 a). And in a document of the year 1458 Henry VI acknowledges the duty which he owes to his dominions 'non tantum in defensione exterius, sed ad providendum pro sanis directione et regimine eorundem interius' (Whethamstede, i. 298; cf. ib. 179, and P. P. C. vi. 174). And in appointing York Protector in 1454, 'the Lordes . . . devysed to the seid Duke . . . the seid name of Protectour and Defensour, the whiche emporteth a personell duete of entendaunce to the actuell defence of this land, as well ayenst th' enemyes outward, if case require, as ayenst Rebelles inward, if eny happe to be' (Rot. Parl. v. 242 b).

These duties not discharged by Henry VI.

It cannot be said that under Henry VI either of these duties was adequately discharged; and the first Parliament of Edward IV hardly overstated the case when they said that 'in his tyme . . . unrest, inward werre and trouble, . . . abusion of the Lawes, partialite, riotte, extorcion . . . have been the gyders and leders of the noble Reame of Englond in auncien tyme . . . reputed of grete honoure . . . (but under him) fallen from that renommee unto miserie, . . . shamefull and soroufull decline' (Rot. Parl. v. 464 a). And in the Parliament of 1467–8, Edward declared through his Chancellor Robert Stillington, Bishop of Bath and Wells, 'that his entent fynall was to ministre Lawe

and Justice, and to plante, fixe, and sette peas thorough all this his Reame, . . . and also entended to provyde an outward pease for the defence and suerte of this Reame' (ib. 622 b). For the whole of this passage cf. *De Laudibus*, c. 37.

as hit apperith bi the said first boke of kynges.] The passage meant is probably 1 Sam. viii. 20, 'Judicabit nos rex noster, et egredietur ante nos, et pugnabit bella nostra pro nobis' (Vulgate).

sithin he oppressith thaim more hym self, &c.] On the poverty and oppression of the French commons see notes to Chap. iii. p. 197, above. Here Fortescue can hardly be acquitted of exaggeration. It was largely the oppressions of the feudal lords which made possible the development of the royal despotism in France. One tyrant was at least better than many, and so the people felt.

King and Tyrant.

as Seynt Thomas saith, whan a kynge, &c.] This is from the *De Regimine*, i. c. 1: 'Si regimen injustum per unum tantum fiat, qui sua commoda ex regimine quærat, non autem bonum multitudinis sibi subjectæ; talis rector *tyrannus* vocatur, nomine a fortitudine derivato; quia scilicet per potentiam opprimit, non per justitiam regit;' cp. ib. c. 3, iii. c. 11. Fortescue alludes to this passage again in N. L. N. i. c. 28, where he repeats St. Thomas's derivation of *tyrannus*, with additions derived from the *Catholicon* of John Balbi of Genoa (Januensis). [On the derivation see Lord Carlingford's note, ad loc., and for Balbi cf. Hallam, Lit. Eur. i. 82. The *Catholicon* was written about 1286.] Ægidius Romanus discusses the difference between the king and the tyrant in *De Regimine*, III. ii. 6 ff., while the *Compendium Morale* traces the growth of tyranny to the general corruption of the human race: 'surrepentibus viciis in tirannidem regna conversa sunt;' fol. 30 a. Pecock, Fortescue's contemporary, defines tyranny in exactly the same way: 'In two maners ouerers mowen holde and vse her ouerte vpon her vndirlingis. Oon maner is bi tiranrie, which is forto in alle deedis of ouerte awaite and performe her owne profit oonli and not the profit of her vndirlingis. . . . An other maner of ouerte . . . is for to . . . awaite and performe the profit of the vndirlingis in hem weel reuling bi doom of resoun' (Repressor, pp. 299 f.). The original source of the distinction is Aristotle, Politics, III. vii. But the distinction has an interesting history during the Middle Ages. It was eagerly seized upon by

Origin of the distinction.

Use made of it by the clerical party during the Middle Ages.

mediæval ecclesiastics in order to justify their opposition to the secular power. I have already (notes to Chap. ii. p. 182, above) quoted Hincmar's use of the etymology 'rex a regendo dicitur.' And in the same passage he continues: 'Quicumque rex veraciter rex est legi non subjacet quia lex non est posita justo, sed injustis;

Hincmar.

. . . alioquin (rex) adulter, homicida, injustus, raptor, et aliorum vitiorum obnoxius quilibet, vel secretè, vel publicè judicabitur a sacerdotibus, qui sunt throni Dei, in quibus Deus sedet, et per quos sua decernit judicia' (*De Divortio Loth. et Tetb.*, Quæstio vi).

Gregory VII.

Gregory VII is, as might be expected, one of the most forcible exponents of these ideas. In a letter addressed to Hermann bishop of Metz in 1080 A.D. he says, 'Quis nesciat reges et duces ab iis habuisse principium, qui, Deum ignorantes, superbia, rapinis, perfidia, homicidiis, postremo universis pene sceleribus, mundi principe diabolo agitante, *super pares, scilicet homines*, dominari cæca cupiditate et intolerabili præsumptione affectaverunt? . . . Omnibus nempe regibus et principibus terræ qui religiose non vivunt et in actibus suis, Deum, ut oportet, non metuunt, dæmones dominantur et misera servitute confundunt. . . . Quis igitur vel tenuiter sciolus sacerdotes dubitet regibus anteferri? Quod si reges pro peccatis suis a sacerdotibus sunt judicandi, a quo rectius quam a Romano pontifice judicari debent?' (Epist. Lib. viii. Ep. 21). And compare an earlier epistle to the same prelate (Epist. Lib. i. Ep. 2, 1076 A.D.), where princes, 'qui honorem suum et lucra temporalia justiciæ Dei præponunt,' are roundly described as limbs

Becket.

of Antichrist. One of the most pertinent passages however that I have found relating to this subject is contained in a letter of Becket's to Pope Alexander III with reference to his own quarrel with Henry II: 'At, inquiet, reddenda erant Cæsari quæ Cæsaris erant. Sed etsi in pluribus obtemperandum Regi, in illis tamen obtemperandum non est, in quibus efficitur ne Rex sit. *Non essent illa Cæsaris sed Tyranni*' (Epistolæ, ed.

John of Salisbury.

Brussels, 4to. 1682, Lib. i. Ep. 30). But the writer in whom this combination of hierarchic and democratic ideas appears in the most striking form is John of Salisbury, the strenuous adherent of Becket. The tyrant, with him, is distinguished from the prince by the violent origin of his power, (with him too Nimrod is the first tyrant,) and by the fact that he does not rule according to law. The prince is the image of God, the tyrant of Lucifer. The prince receives the sword of his power from the Church; the tyrant is

'plerumque occidendus.' Nor is this a mere casual remark. John of Salisbury formally justifies tyrannicide (Policraticus, i. c. 4, iv. cc. 1–3, vii. c. 17, viii. cc. 17, 18, 20). Dr. Stubbs (C. H. i. 146) has justly protested against the views of Allen, that the mediæval clergy were the great upholders of the doctrine of the divine right of kings, as 'shallow and unfair.' But they are more than shallow and unfair, they are often the exact reverse of the truth. The clergy were the great opponents of that doctrine, the chief advocates for the imposition of limitations on the royal power, in opposition to the lawyers who carried on the absolutist tradition of the Roman Law; and the doctrine of the lawfulness of popular opposition to that power under hierarchical sanction was no invention of Scotch Reformers, or of French Leaguers, (on whom see Ranke, Hist. of Engl., book 4. chap. 6); but had already been developed in the Middle Ages. There is, as M. Janet observes, a touch of tribunician eloquence in the passage, quoted above, in which Gregory VII traces the origin of monarchies to a source the reverse of divine; while the worst doctrines of the political Jesuits are anticipated by John of Salisbury. St. Thomas declares emphatically against tyrannicide, *De Regimine*, i. c. 6: 'Hoc Apostolicæ doctrinæ non congruit. . . . Esset hoc multitudini periculosum et ejus rectoribus, si privata præsumptione aliqui attentarent præsidentium necem, etiam tyrannorum. . . . Magis . . . immineret periculum multitudini de amissione regis, quam remedium de substractione tyranni. Videtur autem magis contra tyrannorum sævitiam non præsumptione privata aliquorum, sed authoritate publica procedendum.' And in this he is followed by Fortescue; though as a lawyer Fortescue grounds his argument rather on the legal principle that no one may be put to death without trial: 'nec sine judicio aliquem occidi permittit lex;' N. L. N. i. c. 7 (Works, p. 70). On the lawfulness of resistance to a tyrant St. Thomas has a fine passage in the Summa, *Secunda Secundæ*, Quæst. xlii. Art. 2, where he is discussing the subject of sedition: 'Regimen tyrannicum non est justum: quia non ordinatur ad bonum commune, sed ad bonum privatum regentis. . . . Et ideo perturbatio hujus regiminis non habet rationem seditionis: nisi forte quando . . . multitudo subjecta majus detrimentum patitur ex perturbatione consequenti, quam ex tyranni regimine. *Magis autem tyrannus seditiosus est*, qui in populo sibi subjecto discordias et seditiones nutrit, ut citius dominari possit.' On the whole subject of this

The mediæval clergy not supporters of the doctrine of divine right.

Aquinas and Fortescue on Tyrannicide.

Aquinas on resistance to tyranny.

note see Janet, i. 351–373, 396, 421–2; to whom I am indebted for some of the above references.

Kynge Heroude, &c.] Matth. ii. 16–8. Fortescue uses this illustration of Herod in exactly the same way in N. L. N. i. c. 28 (Works, p. 90).

Ahab.

Acab.] 1 Kings xxi. On this compare N. L. N. i. c. 27 (Works, pp. 89 f.): 'Achab quondam rex Israel jus regium habuit, quod proclamavit Propheta. . . . Ac licet predictus Achab visus sit erga Naboth predictum non regaliter sed politice quodammodo processisse, dum non potestate regiâ voluit auferre vineam ejus, sed sibi optulit vineæ pretium, et, cum nec sic illam nancisci poterat, processu legis per testes productos et sententiam judicialiter in Naboth latam vineam optinuit, tamen quia factum illud contra legis naturæ decretum, quod nulli permittit alteri facere quod sibi fieri nolit, efficiebatur, rex ipse acerbissima comminatione predicta Domini mandato perterritus est.' The case of Ahab is quoted also by Pseudo-Aquinas, *De Regimine*, iii. c. 11.

ffor theys wordes seid to the profete, &c.] 1 Sam. viii. 9; cp. N. L. N. i. c. 27 (Works, p. 89): 'Idem fuit dicere, "predic populo jus regis," et, "predic eis potestatem quam exercere poterit rex, cum fuerit super eos constitutus."' Compare the notes to Chap. i. above, pp. 177–8.

as ofte as such a kynge, &c.] For the sentiment compare the latter part of the passage given in the last note but one; from which it appears that this is no less true of acts done 'politically.'

Fortescue on the Law of Nature.

þe lawe off nature.] Fortescue's views on the law of nature are contained in the first part of the *De Naturâ Legis Naturæ*. He there says that the golden rule, though contained in the Law and the Gospel, is really a part of the Law of Nature, as the Canon Law says: 'Jus naturale est quod in lege et Evangelio continetur, quo quisque jubetur alio facere quod sibi vult fieri,' &c. (c. 4). Fortescue's analysis of the Law of Nature is derived partly from the Canon Law, but mainly from St. Thomas, Summa, *Prima Secundæ*, Quæst. xc–cviii. See especially Quæst. xciv, xcv; cp. also Ægidius, *De Regimine*, III. ii. 24 ff. Pecock in the first eight chapters of the 'Repressor' argues in much the same way as Fortescue, though his object is different, being in fact identical with that of Hooker in the second book of the 'Ecclesiastical Polity,' viz. to refute those who hold 'that Scripture is the only rule of all things

which in this life may be done by men' (Hooker, Heading to Book ii). But Pecock argues like Fortescue, that the Law of Nature, or, as he calls it, 'lawe of kinde, which is doom of resoun and moral philosophie,' is not abrogated either by the Old or New Testament, and is in fact the ultimate ground of many of the things which they enjoin, though the confirmation given by their authority is not to be despised (Repressor, u. s. See esp. pp. 6, 18–20, 29–32, 34, 37–40). Nor were these speculations confined to the study. Stillington in his speech to the Parliament of 1467–8, already quoted, divides 'all the Lawes of the world . . . in thre; that is to sey, the Lawe of God, Lawe of nature, and posityfe Lawe' (Rot. Parl. v. 622b); while according to the first Parliament of Edward IV it was 'using the benefice of the Lawe of Nature' that Richard Duke of York returned to assert his claim to the crown, after his attainder in the Parliament of Coventry (Rot. Parl. v. 465 b).

the lawe off nature woll in this case, &c.] For the golden rule as part of the law of nature compare the extract given in the last note from N. L. N. i. c. 4; and for the particular application of it to the case of monarchs, compare the story of Trajan quoted in the *Compendium Morale*, fol. 39 d: 'amicis eum culpantibus quod nimium esset omnibus comis, respondit talem debere imperatorem esse privatis, quales esse imperatores privatus optasset.' The original authority is Eutropius, Lib. viii. c. 5.

yet of necessite thai muste be gratter, &c.] On Lancastrian poverty see the notes to the following chapters; and compare Introduction, Part I, above, pp 5–6, 12–14, 17.

CHAPTER V.

creaunce and borowynge.] This was a very common feature of Lancastrian finance. See Introduction, Part I, u. s.

such maner of borowynge makith the grete lordis, &c.] In the Paston Letters, i. 249, is a bond given by the Duke of York to Sir John Fastolf for the sum of £437, which is secured on certain jewels which are pledged by the noble borrower. In Ellis's Letters, II. i. 143–4, is a pressing request from Richard Duke of Gloucester

for the loan of £100. Ready money was one of the scarcest articles in the Middle Ages, and any one who could command a supply of it had enormous power.

what dishonour is this, &c.] Compare Pseudo-Aquinas, *De Regimine*, i. c. 7: 'Turpe est enim, et multum regali reverentiæ derogat, a suis subditis mutuare pro sumptibus regis vel regni.' So Vincent of Beauvais, *De morali Institutione*, c. 14: 'Hec de prudenti rerum domesticarum administratione, ad quam pertinet eciam cautela super vitanda debitorum obligacione; de qua sic loquitur Ambrosius in tractatu de Sancto Thobia: "Paupertas crimen non habet, sed debere verecundum, non reddere verecundius est"' (f. 104, v°); with many other good and sensible counsels against running into debt.

his subgettes woll rather goo with a lorde þat is riche, &c.] On this danger, which from the circumstances of his times is constantly present to Fortescue's mind, see the notes to Chapter ix. below.

by asseignementes.] This again was a prominent feature of Lancastrian finance. Every source of revenue, imperial and local, was anticipated before it fell due by assignments made on it for various purposes, pensions granted to individuals for real or pretended services being one of the heaviest items. (See notes to Chaps. vi. xiv. below).

wich . . . shall cost hym right miche, &c.] The difficulty, which Fortescue here alludes to, of getting payment of royal grants made by assignment or otherwise is forcibly illustrated by two letters of Margaret of Anjou, in one of which she writes to the collectors of the customs in the port of Boston urging them to pay to John Wenham and his wife an annuity of ten marks, which the king has granted them out of the customs of that port; while in the other she positively writes to the Duchess of Somerset, begging her to use her influence with her husband (Edmund Beaufort) in order that one Robert Edmund, a squire of the Queen's, may receive payment of the sum of 360 'franks,' which has been granted him by the king (Letters of M. of A. pp. 118, 142).

a c. li in hand . . . xl. li. worth lande yerely.] In the proclamations issued by Edward IV, March 23, 1470, against the Duke of Clarence and the Earl of Warwick after the overthrow of Sir Robert Welles in the battle of Stamford, it was announced that 'he that taketh and bringeth the said Duc or Erle shall have for his

reward to him and his heires, an C li. worth of his lond of yerely value, or M[l]. li. in redy money at his election; and for a knyght xx. li. worth of his lond, or C. marc in money; and for a squyer x. li. worth of his lond or xl. li. in money,' Warkworth's Chronicle, p. 55; of. Rymer, xi. 654. On the history of the attempts to prevent the alienation of the royal domain see notes to chap. xix. pp. 341–2, below.

the grettest harme that comyth of a kynges pouerte, &c.] According to Whethamstede, i. 249, the resumption act of 1456 was occasioned by the consideration forced upon the 'probi, providi, politicique viri, ac maturi, in Parliamento apud Westmonasterium congregati, . . . quomodo pauperiem Regis subsequitur spoliatio plebis, qualiterque ibi oportebit omnino multam, seu taxam, crescere, ubi res deficiunt necessariæ pro regia sustentatione.' So in the manifesto issued by the Yorkist Lords before the battle of Northampton, which was fought July 10, 1460, they complain *inter alia* of 'the pouerte and mysery that . . . oure souerayne lorde standeth inne, nat hauyng any lyuelode of the croune of Englond whereof he may kepe hys honorable housholde, whyche causethe the spyllynge of his lyegemenne' (Engl. Chron. p. 86). In the essay 'Of a King,' wrongly attributed to Bacon, it is pithily said, 'Want supplieth itself of what is next, and many times the next way.' Bad effects of the poverty of the Crown.

exquysite meanes of geytinge of good.] For some of the financial shifts to which the Lancastrian kings were reduced by their poverty see Introduction, u. s. Edward IV with much less excuse was not above resorting to similar 'exquysite meanes,' in order to render himself independent of Parliamentary grants. This object, and the means which Edward took to attain it, are stated most clearly by the Cont. Croyl., p. 559, cf. ib. 535, 539. Foremost among these means would come his invention of benevolences: 'ut per benevolentiam quilibet daret id quod vellet, immo verius quod nollet' (Ib. 558, cf. Three Fifteenth Cent. Chron., p. 175, on the large sums raised by Edward IV by means of Privy Seals). Next to this would come the system which Fortescue characterizes as 'putting defaute in his subgettes;' in other words that rigorous and inequitable enforcement of penal statutes, many of them obsolete, which was a favourite financial device both of Edward IV and of Henry VII (see Stowe, p. 431a; S. C. H. iii. 217). The treason laws, as might be expected, were pre-eminently Financial shifts of the Lancastrian and Yorkist Kings. Benevolences. Exaction of fines.

adapted to this kind of extortion. In 7 Edward IV various aldermen of London 'were arested, and treasonne surmysed uppone them, whereof thei were acquyte, but thei lost grete goodes to the kynge' (Warkworth, p. 5, cf. Cont. Croyl., p. 539). So of the Kentish adherents of the Bastard Falconbridge in his attempt on London in May, 1471, it is said, 'some manne payed cc. marke, some a c. pownde, and some more and some lesse, so that it coste the porest manne vijs. whiche was noȝt worthe so myche, but was fayne to selle suche clothinge as thei hade, and borrowede the remanent, and laborede for it aftyrwarde; and so the Kynge hade out of Kent myche goode and lytelle luff. Lo, what myschef groys after insurreccion! &c.' (Warkworth, pp. 21–2). This latter passage is curiously like Fortescue in style. Similar charges were made against Richard II.

impossibile est indigentem, &c.] This is an *Auctoritas* from the first Book of the Ethics. The original is *ἀδύνατον γὰρ ἢ οὐ ῥᾴδιον τὰ καλὰ πράττειν ἀχορήγητον ὄντα.* I. viii. § 15.

CHAPTER VI.

Ordinary and extraordinary expenditure.

I do not think I can better illustrate the general subject treated of in this and the following chapter, viz. the royal expenditure under the two heads of ordinary and extraordinary charges, than by giving an abstract of the financial statements of the three years 1411, 1421, and 1433; one from each of the three Lancastrian reigns. The first two are to be found in P. P. C. ii. 7–14, 312–5 (=Rymer, x. 113), and represent the estimates for the year as prepared by the Council. The third is in the Rolls of Parliament (v. 432–9), and contains the statement drawn up by Lord Cromwell on undertaking the office of treasurer in 1433, and laid before the Parliament of that year. It is by far the most elaborate and interesting of the three. An earlier statement of the year 1401 is in P. P. C. i. 154, ii. 56, but it is too fragmentary to be of much use.

1411.

ESTIMATED REVENUE.

Budget of 1411.

	£	s.	d.
Subsidy on Wool	30000	0	0
Half-tenth of the Province of Canterbury	6500	0	0
Tunnage and Poundage	5333	6	8
Proceeds of the Hanaper	1100	0	0
Aulnage and Pannage	500	0	0
Escheats	300	0	0
Great Custom of Wool	1800	0	0
Wards and Marriages	1000	0	0
Ferms of the Sheriffs	1100	0	0
Tenth of the Province of York	300	0	0
Little Custom	333	6	8
Ferms of Alien Priories	100	0	0
Total	£48366	13	4

ESTIMATED EXPENDITURE.

	£	s.	d.
Calais	22500	0	0
Scotch Marches	8700	0	0
Ireland	2666	13	4
Castle of Frounsak	1630	13	4
Duchy of Aquitaine	6618	6	8
King's Household	13415	5	3
King's Chamber and Wardrobe	1866	13	4
Annuity to Hartonk Van Clucx	66	13	4
Treasurer, Privy Seal, Justices, etc.	2613	0	10
Parchment, etc., for Exchequer, Privy Seal, etc.	100	0	0
Arresting Ships, Messengers, Proclamations	66	13	4
Liveries of S. George, to Justices, etc.	972	19	0
Officers of the Great Wardrobe	296	18	0
King's Works (Repair of Castles and Manors)	1000	0	0
To the men of Prussia	1772	16	8
Keeping the King's Lions	120	0	0
Total	£64406	13	1

The deficit on the estimates is therefore £16,040. It is expressly noted that no provision is made for the keeping of the sea, nor for any embassies that might be necessary; nor for the wages of the King's Council, nor for the debts on the household and wardrobe, &c.; nor for any annuities payable at the Exchequer, as opposed, that is, to those which were charged on the revenues of counties, the customs of particular ports, &c. With reference to these last, precepts had already been sent in the August of the previous year (1410) to the Sheriffs, Collectors of the Customs, Keeper of the Hanaper, &c., ordering them to suspend payment of all annuities till the king and the council had deliberated upon them, (Rymer, viii. 651). Parliament when it met granted, besides

the subsidy on Wool and Tunnage and Poundage, a tax of six and eight-pence on every £20 of income derived from land.

1421.

Budget of 1421.

ESTIMATED REVENUE.

	£	s.	d.
Great Custom of Wool	3976	1	2
Subsidy on Wool	26035	18	8½
Little Custom	2438	9	1¼
Tunnage and Poundage	8226	10	9½
Casual Revenues	15066	11	1
Total	£55743	10	10¼

ESTIMATED EXPENDITURE.

	£	s.	d.
Keeping of England	5333	6	8
„ Marches of Scotland [time of war]	9500	0	0
„ Ireland	1666	13	4
„ Castle of Frounsake	666	13	4
Calais and the Marches [time of war]	19119	5	10
Salaries of Treasurer, Privy Seal, Justices, Barons, and other officers of the King's Courts	3002	17	6
„ Collectors and Controllers of Customs, payable at the Exchequer	547	0	0
„ „ Chargeable on the Customs	274	3	4
Annuities payable at the Exchequer to various Lords and others	7751	12	7½
„ „ Chargeable on the Customs	4374	4	3
Total	£52235	16	10½

The surplus on the estimates is therefore £3,507, but out of this provision has to be made for the chamber of the king and queen, for their household, their wardrobe; for the king's works, for the construction of a new tower at Portsmouth; for the office of the clerk of the king's ships; for the keeping of the king's lions, and the salary of the Constable of the Tower; for the Artillery and other ordnance for the war; for the keeping of the king's prisoners; for embassies, messengers, parchment, &c.; for the expenses of the Duchess of Holland. It is further noted that no provision has been made for paying off the various debts of the late reign, or the debts contracted by the king himself when he was Prince. Parliament, when it met in May 1421, empowered the Council to give security for any sums that might be lent to the king; and in December 1421 a tenth and fifteenth were granted; but this, I imagine, would come into a new financial year, the accounts apparently being made up to Michaelmas. There is a very elaborate statement of accounts for the year 1415–6 in P.P.C.

ii. 172, ff. But as the items of expenditure are calculated, not for a year, but for various fractions of a year, they are too complicated to be abstracted. The estimate of revenue, amounting to £56,966 13*s.* 4*d.*, may however be studied with advantage, as it is much more detailed than that given above, and is for the year June 1415–June 1416.

1433.

ESTIMATED REVENUE.

Budget of 1433.

	£	*s.*	*d.*	£	*s.*	*d.*
Net proceeds of the Ferms of Counties, etc., and of the Green Wax, less deductions for expenses, Fees, Annuities, etc.	1903	8	3			
Escheats, Wardships, Marriages	500	0	0			
Fee-Ferms of Townships and Manors, less deductions *ut supra*	634	10	8			
Ferm of Lands, etc., in the King's hands, less u. s.	3835	10	$8\frac{3}{4}$			
				6873	9	$7\frac{3}{4}$
Ferm of Subsidy and Aulnage of Cloth, less u. s.	178	4	1			
Custom of Wines paid by Foreigners, less u. s.	76	17	0			
				255	1	1
Proceeds of the Hanaper, less u. s.	137	12	$7\frac{1}{2}$			
„ Coinage, less u. s.	87	8	$4\frac{1}{2}$			
„ Exchanges, less u. s.	79	13	4			
„ Office 'Coronatoris, Marescal, Hospic' Regis'	18	5	0			
				322	19	$3\frac{3}{4}$
Proceeds of Alien Priories, less u. s.	205	5	0			
Net Revenues of Duchy of Aquitaine, less u. s.	77	0	$8\frac{3}{8}$			
				282	5	$8\frac{3}{8}$
Net Revenues of Duchy of Cornwall, less u. s.	151	0	$9\frac{1}{4}$			
„ South Wales, less u. s.	470	5	$4\frac{1}{2}$			
[„ North Wales,[1] less u. s.	590	18	4]			
„ Earldom of Chester,[2] less u. s.	11	4	0			
				632	10	$1\frac{3}{4}$
[„ Duchy of Lancaster,[3] less u. s.				2408	8	$6\frac{3}{8}$]
Fines, Amerciaments, Reliefs, etc.				100	0	0
Total of ordinary Revenue				8466	5	$10\frac{5}{8}$
Shirk (Chirk) and Shirklandes	0	0	0			
Temporalities of Vacant Bishoprics	0	0	0			
Proceeds of the Scrutiny	0	0	0			
Reliefs and Fines	0	0	0			
				Not Estimated.		
Customs and Subsidy of Wools, Tunnage, and Poundage. Average of Three Years				26966	2	$10\frac{1}{2}$
Total				£35432	18	$9\frac{1}{8}$

[1] Not included in Total, because assigned to John Radclyff in part payment of £7,629 7*s.* $1\frac{1}{2}$*d.* due to him; cf. P. P. C. iv. 199.

[2] Further reduced from £44 10*s.* 8*d.* by the grant of the Manor of Shoteswyk (Shotwick) to Wm. Porter.

[3] Not included in the Total.

ESTIMATED EXPENDITURE.

	£	s.	d.	£	s.	d.
Deficit on Ireland	18	17	5½			
„ Calais	9064	15	6			
„ Windsor Castle	72	8	5			
				9156	1	4½
King's Household	10978	12	11			
„ Chamber	666	13	4			
„ Wardrobe	1300	0	0			
„ Works	666	13	4			
Repair of Windsor Castle	66	13	4			
				13678	12	11
Pensions, etc., payable at the Exchequer to the Dowager Queens, and various great Lords, etc.	7556	2	11			
Wages of Collectors and Controllers of the Customs	582	6	8			
„ Constable of the Tower	100	0	0			
„ Treasurer, Privy Seal, Justices, Barons of the Exchequer, and necessaries for their Courts	2914	2	5			
				11152	12	0
Keeping of Ireland	2666	13	4			
„ Scotch Marches[1]	4816	13	4			
„ Aquitaine	2739	13	4			
„ Castle of Frounsake	666	13	4			
				10889	13	4
Wages of Duke of Gloucester and Council	5133	6	8			
„ Earl of Warwick, the King's Tutor	166	13	4			
Pension to Giles of Britanny	166	13	4			
Custody of the King's Lions	36	10	0			
				5503	3	4
Repair of the King's Ship	100	0	0			
Custody of Dukes of Orleans and Bourbon, and the Count of Eu	670	0	0			
Grooms and Pages of the Household and Chamber	126	13	4			
Embassies to and from the King	2626	13	4			
Messengers, etc.	200	0	0			
				3723	6	8
To be provided for: Kingdom of France. Aquitaine. Keeping of the Sea. 'Nywenham Brigge.'[2]				Not estimated.		
			Total	£54103	9	7½

Though I have gone over these last accounts several times in different ways, I cannot make the totals agree with those given by Lord Cromwell himself. Some items I cannot be sure that I have calculated rightly. But these points are of the less importance, because my object in the present note is not to estimate the condition of the revenue in any given year, but

[1] Double in time of War.

[2] Cf. P. P. C. iii. 304.

merely to illustrate the various heads of expenditure enumerated by Fortescue. For the same reason I have not given any particulars of the debt, which amounted to nearly £165,000. On the side of income I have only given the net revenue. The gross ordinary revenue is nearly three times as much. The fixed charges by which it is so much reduced are 'solutiones, vadia, feoda, annuitates;' *i. e.* expenses, wages, fees or salaries, and pensions, whether perpetual (in feodo), or for life (ad terminum vitæ). Some of these charges are fair enough; *e. g.* the salaries of the Chancellor and all his staff are charged against the profits of the Hanaper. But many of them were probably of that indefensible kind which caused so much popular irritation in the fifteenth century, and which Fortescue himself is so anxious to abolish. (See notes to Chap. xiv. pp. 292–3, below). It should be noticed that in the accounts for the year 1421 the item of annuities, &c. makes up nearly a fourth of the whole estimated expenditure. It is curious that Fortescue nowhere mentions Ireland, which figures prominently in all the above accounts. Perhaps he considered that it ought to pay its own expenses. How far this was from being the case may be seen from the fact that Ireland was constantly one of the objects for which supplies were asked in Parliament (Rot. Parl. iii. 425, 454, &c.). In 1406 the Commons complained that 'grande somme et excessive est ore donez pur la saufe-garde de la Terre d'Irlande, . . . et nient meyns la dite Terre est en voie de perdicion' (Rot. Parl. iii. 577; cf. 573. The author of the 'Libel of English Policy' is also evidently in great alarm about Ireland. And the matter lay so near his heart that he proposed to write a separate treatise on the subject. He says that the Earl of Ormond had declared that a year's expenses of the war in France would suffice to reduce Ireland permanently to order. Political Songs, ii. 185, ff.). In 1408 the sum of 7000 marks allowed to the Lieutenant of Ireland is secured mainly on English sources of revenue (P. P. C. i. 313, ff.). In 1423 the Earl of March as Lieutenant is allowed 5000 marks, to be paid as far as possible out of the Irish revenues, the balance to be paid by England (ib. iii. 68). In 1433 the Lieutenant of Ireland was ordered to propose a Resumption Act in the Irish Parliament, 'considered the great need that the kyng hath to good' (ib. v. 297).

Fixed charges on the ordinary revenue.

Ireland.

thai nedun to be gretter than woll be the charges, &c.] Compare Bacon's Essay *Of Expense*: 'Certainly, if a man will

keep but of even hand, his *ordinary expenses* ought to be but to the half of his receipts; and if he think to wax rich, but to the third part.'

Saint Bernard *De re familiari.*

Seynt Bernarde saith, &c.] This is from 'Bernardus de cura rei familiaris,' or 'Epistola Sancti Bernardi . . . ad Raymundum Dominum Castri Ambruosii,' printed in opera S. Bernardi (Paris, 1640), col. 1926, and re-edited from a MS. in the Laurentian Library by J. C. Amadutius in 'Anecdota Litteraria' (Rome, 4 voll. 8vo., 1773–1783), iv. 229, ff. It seems to have been popular in the Middle Ages. Mr. Lumby has published a metrical paraphrase of it in the Scottish dialect, E. E. T. S. 1870. It was published in German at Wittemberg in 1552 under the title, 'Die Epistel Sanct Bernards von der Haussorge . . . verdeudscht durch Johan Spang. [enberg, ?].' The passage alluded to by Fortescue is as follows:—'Quod si in tua domo sumptus et reditus sunt æquales, casus inopinatus poterit destruere statum ejus.' In the paraphrase this passage runs thus:—

> 'And first provide with werteu þat þi rent
> To þi expensis be equiuolente
> For foly expense but temporance is noy,
> And of his house þe stat it may destroy.'—p. 2.

Assignments for ordinary expenditure.

charges ordinarie.] On the king's ordinary charges, the need for an 'asseignment of lyvelode' to bear them, the advantages which would follow from such assignment, and the means to be taken to prevent the alienation of any part of the revenues so assigned, compare Appendix B, §§ 4, 5. The manifesto put forth by Robin of Redesdale in 1469 against Edward IV contains the following articles, which might have been drawn up by Fortescue:—'We, the Kyngis true and feithfulle Commons and subjettes of this lond, mekely besechen . . . that hit well lyke hym for the gret wele of hymself, his heires, and the common-wele of us his true subjettes and Commons, . . . to . . . stablish for evyr to be hadde suche a sufficiente of lyvelode and possescions, by the whiche he and alle his heires aftir hym may mayntene and kepe theire most honorable estate, withe alle other ordinarie charges necessarye to be hadde in this lond. So that he nor noon of his heires, hereafter, of necessite, nede to charge and ley uppon his true Commons and subjettes suche gret imposicions as before is expressid; Unlesse that it were for the gret and urgent causes concernynge as well the wellthe of us, as of oure seid sovereyne lord.

'Also to be enstablisshid be the seid auctorite, that yf any persone . . . presume or take uppon them to aske or take possessions of any of the lyvelod so appoyntyd, that, . . . he be taken and reputyd as he that wold mynysshe and apeire the royall estate of his sovereyn lord, and the commonwele of this lond. And went (without) pardon so to be punysshed.' (Warkworth, pp. 50–1.)

wich shalbe worth to the kynge, &c.] v. s. chap. v. ad init. and Appendix B. u. s.

This may in nothinge restrane the kynge's pover, &c.] This argument, which is here introduced with special reference to limitations on the king's power of alienating his property, is in N. L. N. i. c. 26, and in the passage from the *De Laudibus* cited in the next note, applied to the subject of constitutional restraints on the royal power in general. Lord Carlingford (note, ad loc.) thinks that the object of Fortescue, in that and other passages, was to reconcile Prince Edward of Lancaster to the difference between the constitutional monarchy of England, and the despotic government which he saw during his exile on the Continent. But this style of argument, by which it is sought to prove that restrictions are no restrictions, is very much older than the circumstances of Fortescue's time. It forms the burden of a considerable portion of the celebrated song on the battle of Lewes; *e.g.*:— Argument that constitutional limitations do not lessen the royal power.

'Non omnis arctatio privat libertatem,
Nec omnis districtio tollit potestatem.

. . . . . .

Et hæc coarctatio non est servitutis,
Sed est ampliatio regiæ virtutis.

. . . . . .

Sed et sic angelici spiritus arctantur,
Qui quod apostatici non sint confirmantur.
Nam quod Auctor omnium non potest errare,
Omnium Principium non potest peccare,
Non est impotentia, sed summa potestas,
Magna Dei gloria magnaque majestas,' etc.
(Political Songs, Camd. Soc., pp. 105–7).

And Bracton says: 'Potestas injuriæ diaboli et non Dei est' (Lib. iii. c. 9. in S. C. H. ii. 301 *note*); while Whethamstede (i. 353) quotes from Seneca the sentiment: 'vis ad nocendum vis est

pestifera.' Very possibly Fortescue had in his mind the passage in Diodorus about the Egyptian kings, part of which has been quoted in the notes to Chap. ii. p. 191, above. 'Veluti privati tenebantur legibus, neque id egre ferebant, existimantes parendo legibus se beatos fore. Nam ab his, qui suis indulgerent cupiditatibus, multa censebant fieri quibus damna periculaque subirent. Scientes enim sæpius se peccare, tamen aut amore, aut odio, aut alio animi morbo victi, nihilominus aberrant.' (Diod. Sic. i. (ii.) 71, Poggio's Transl.)

Sophistry of the argument.

As to the value of the argument in itself, it seems to rest on a confusion between the inability to do wrong which comes from the state of the will, as in the case of God and the Angels, and that which is the result of mere external limitations. To say that the latter are in any real sense an increase of power seems absurd. Bacon takes much higher ground in distinguishing between them. 'In *Place* there is license to do good and evil; whereof the latter is a curse; for in evil the best condition is not to will; the second not to can. But power to do good is the true and lawful end of aspiring.' (Essay *Of Great Place.*) And can it be said that constitutional limitations only prevent bad kings and ministers from going wrong, and have never hindered good kings and ministers from doing what would be desirable? Professor Beesly says of the elder Pitt: 'Pitt was the most towering statesman that England has produced. . . . But . . . he worked in the gyves of a constitution. He had to play a game of which others had invented the rules.' (Essays on International Policy, p. 169.) But as we cannot ensure a succession of Chathams, we may still believe with Fortescue in the desirability of constitutional restrictions. And Fortescue himself gives this very reason (De Laudibus, c. 9). After admitting with Aristotle that the rule of the best man is better than the rule of the best law, he adds: 'sed non semper contingit presidentem populo hujusmodi esse virum.'

the holy sprites and angels.] Compare the extract given above from the song on the battle of Lewes, and *De Laudibus*, c. 14 (ad finem): 'Potestas, qua eorum alter perperam agere liber est, libertate hujusmodi non augetur, ut posse languescere morive, potentia non est, sed propter privationes in adjecto, impotentia potius denominandum. Quia, ut dicit Boetius, "Potentia non est nisi ad Bonum;" quod posse male agere, ut potest rex regaliter regnans

liberius quam rex politice dominans populo suo, potius ejus potestatem minuit, quam augmentat. Nam sancti spiritus, jam confirmati in gloria, qui peccare nequeunt, potentiores nobis sunt, qui ad omne facinus liberis gaudemus habenis.'

the kynges housholde.] For some account of the royal household and its expenses prior to the Lancastrian period, see S. C. H. ii. 553–8. It is there shown how unpopular an institution it was, and what a favourite topic of attack it formed; not perhaps because the mal-administration there was worse than in other departments, but because it was more obvious. Other abuses might require special knowledge for their detection; the extravagance and selfish rapacity of the household were plain to every one, and, when the court was on progress, were brought to the very doors of the people's homes. With it too were associated all the grievances that gathered round the hated system of purveyance; a system so hateful that it was attempted to abolish the very name (ib. i. 537). Nor was it very different during the Lancastrian and Yorkist period. Complaints as to the state of the household appear frequently on the Rolls of Parliament, and it is with reference to the household that the plan was most often proposed which Fortescue wished to see applied to the whole of the ordinary expenses of the crown, of appropriating certain revenues to its maintenance, and making those revenues inalienable. In the Parliament of Jan. 1404, revenues to the amount of £12,000 were appropriated to the household, and all grants made therefrom were to be *ipso facto* void (Rot. Parl. iii. 528). In 1406 the increasing expense and decreasing efficiency of the household were the subject of bitter complaint in Parliament, and stringent measures were passed to remedy this state of things, but they were only to remain in force till the end of the next Parliament (ib. 576, 579, 586 b, 587 b, 589 a). In May, 1413, it was agreed, on the request of the Commons, that in all payments of annuities the king should be preferred to the extent of £10,000 annually for the maintenance of his household, chamber and wardrobe (ib. iv. 5). In Nov. 1439, the king 'havyng knoweliche of grete murmour and clamour that shold be in his Roialme of Englond, for non paiment of the dispensis of his Houshold,' with the assent of the Lords spiritual and temporal and the Commons, appropriated thereto the net revenues of the Duchies of Lancaster and Cornwall, and a quarter of

The royal household.

Abuses of it.

Purveyance.

Appropriation of revenue to the maintenance of the household.

the tenth and fifteenth granted in that Parliament; and authority was given to the council to make all necessary regulations for the household (ib. v. 7, 8, 32). In June, 1442, the Commons petitioned that these arrangements might be prolonged and made more stringent, but the king gave an evasive answer (ib. 62–3). In April, 1454, new assignments were made for the household to the amount of £5,186 6*s.* 8*d.* (ib. 246–7). In 1455 these were reduced below £4,000 (ib. 320–1); while in 1482 they rose to nearly £11,000, and it was ordered that these assignments should take precedence of all others (ib. vi. 198–9). For assignments made by the council to the household, cf. Rymer, viii. 610; P. P. C. vi. 311–2. The Resumption Acts of 1450 and 1455 were both prefaced by a reference to the state of the household as proof of their necessity. On the former occasion it was declared that the annual expense of the household alone was nearly five times the amount of the whole ordinary revenue (Rot. Parl. v. 183, 300). But all these measures were ineffectual; and the debts of the household formed a yawning gulf, into which every casual source of income was thrown without having the effect of causing it to close. Thus the rents of forfeited lands were appropriated to this object (Rot. Parl. iii. 625; Cal. Rot. Pat. p. 244 a; P. P. C. i. 108). The goods of felons and outlaws went the same way (Cal. Rot. Pat. p. 246 b, 248 a; Rymer, viii. 442). Alien priories, temporalities of vacant bishoprics, wardships, marriages, etc., were utilized for the same purpose (Rymer, viii. 205, 510; Cal. Rot. Pat. p. 265 b; cf. ib. 297 a). Of the various schemes of reform, one at least has been preserved to us. This was drawn up by the Great Council in Nov. 1454, during the incapacity of Henry VI, in fulfilment of an intention formed by him before his malady attacked him. This reformed household is modelled on that of Henry V; and it is stated that by recurring to that model, a great reduction will be effected. But even so the household consists of 610 regular and 13 occasional officers and servants (P. P. C. vi. 220 ff., and, less correctly, in 'Ordinances of the Royal Household'). Of the household of Edward IV we have an interesting account in the 'Liber Niger Domus Regis,' printed in the last-mentioned volume. This scheme was drawn up by 'the greate counsayll of lordes spirituall and temporall, the Cardinal of Canterbury (Bourchier), George Duke of Clarence, Richard Duke of Gloucester, the wise and discrete judges, and other sad avised and well learned

Casual revenues devoted to the household.

Schemes of reform.

Liber Niger of Edward IV.

men.' The expenses of the household are put at £13,000 per annum, but it is added, 'if the king's hyghnesse plese to kepe a lesse household than the foresayde grete summe sheweth of here, in this boke are devysed nine other smaller houses . . . whereof the king may chuse such as shall please hym best' (pp. 20–1); a suggestion very like that which Fortescue makes here, as is the recommendation that the charges of the household should be 'taken of the surest grounds of payment in the land' (p. 22). Indeed if these ordinances, which are not dated, are subsequent to Fortescue's pardon in 1471, he may have been one of the 'sad avised and well learned men' who helped to draw them up. The necessity for a great reduction of the household, at any rate during the first year of the Lancastrian restoration, is insisted on by Fortescue, Appendix B. § 7.

warderobe.] For some account of the earlier history of the royal wardrobe, see S. C. H. ii. 275–6, 545–6. But in the thirteenth and fourteenth centuries 'the whole accounts of army, navy, and judicial establishments appeared in the computus of the wardrobe along with the expenses of the royal table, jewel chests, nursery, etc.' (ib. 551). During the fifteenth century this was no longer the case. As may be seen from the abstracts of accounts given above, a more rational system of account had placed the naval, military, and administrative expenditure under separate headings, and the contents of the wardrobe accounts correspond much more nearly to their designation. The *Liber Niger* of Edward IV mentions how the wardrobe itself, the privy seal office, the marshalsey, royal works and other departments had been gradually separated from the household (Ordinances &c. pp. 49, 74). Yet the public revenue and expenditure were still so far considered the king's personal affairs, that on the death of any king new assignments, etc. were necessary (cf. *e.g.* Rymer, ix. 290 b). Estimates for the wardrobe account of 1423, drawn up by the king's council, are in Stevenson's 'Wars of the English in France,' i. 386–7. They amount to £629, and consist largely of liveries for the fraternity of St. George, liveries for the Chancellor, Treasurer, Privy Seal, Justices, Barons of the Exchequer, etc. The wardrobe accounts of Edward IV for the half-year April–Michaelmas, 1480, have been printed by Sir Harris Nicolas, together with the privy purse expenses of his daughter Elizabeth of York, wife of Henry VII (London, 1830).

The royal wardrobe.

bi the clerkys off theschekquer.] Because the accounts of the Treasurer of the household were delivered into the exchequer (Ordinances, etc., p. 64).

Salaries of great officers and Judges.

the kynges grete officers, his courtes.] From the abstracts of accounts given above, it will be seen that the salaries of the great officers and of the Judges are classed together there, as they are by Fortescue here. The Chancellor was paid partly by fees, partly by an annual salary (Foss, Judges of England, ii. 21, 149). The Treasurer and Privy Seal had each a salary of £1 per diem (Rymer, xi. 58; Rot. Parl. iv. 437; P.P.C. iii. 8). Under Henry VI 'the nominal salaries of the Judges remained the same as in former reigns: viz., £40 to the chief, and forty marks to the puisne Justices of each court. But . . . there were always additional grants . . . to the Chief Justice of the King's Bench of 180 marks; to the Chief Justice of the Common Pleas 140 marks; and to each of the other Judges 110 marks; and all who acted as Justices of Assize received £20 a year. These sums were payable half-yearly at Easter and Michaelmas; but it is evident they were frequently allowed to get into arrear' (Foss, u. s. iv. 227). It was indeed very difficult under Henry VI to secure to the Judges that 'ready payment' of their salaries which was, as Fortescue truly says, so necessary for their efficiency. In 1432 the Commons represented that, whereas formerly the Justices, Serjeants, and King's Attorney had always received their salaries half-yearly in ready money, William Kynwolmershe, late Treasurer of England, had introduced the plan of paying them by means of assignments of the King's debtors; and it was prayed that in view of the great abuses which this system gave rise to, ready-money payments might be resumed (Rot. Parl. iv. 394). The petition was granted; but none the less in the budget of the next year the debts to Justices, Serjeants, &c. for arrears of salary amounted to £805 (ib. 437). In 1439 the Justices, Serjeants, and Attorney complain that owing to the non-payment of their salaries there was no Justice, except the two chief Justices, who had not lost £100 per annum by reason of his office; and that if remedy were not provided they would have to resign, to the king's great dishonour; they prayed that certain revenues might be assigned for their payment (ib. v. 14). Their prayer was granted, and in 1451 this statute was confirmed (ib. 214). On the accession of Edward IV the Commons petitioned that these acts, among others of the Lancastrian period, might be

Frequently in arrear.

confirmed, but the King replied: 'hit is thought necessary that they be truly payed, but not to afferme their assignement of payment and contentation by auctorite of Parlement, but that it be at the kynges pleasure' (ib. 490). Edward seems to have been determined to maintain, and if possible to increase, the dependence of the Judges on the Crown (cf. ib. 492 b, ad pedem). Ultimately, under Edward IV and Henry VII the salaries of the Judges were partly secured on the subsidy on wool (ib. vi. 55, 101, 395, 524). On this point of payment of the Judges, as on so many others, Burke is at one with Fortescue. In introducing his plan of economical reform he said: 'In the first class (of payments) I place the *Judges*, as of the first importance. It is the publick justice that holds the community together; the ease, therefore, and independence of the Judges ought to supersede all other considerations, and they ought to be the very last to feel the necessities of the State.' The great evil of ill or irregularly paid Judges was their consequent liability to corruption, and this was one great cause of the wholesale judicial scandals of Edward I's reign. (See Foss, u. s. iii. 44.) Compare Vincent of Beauvais, *De Mor. Inst. Princ.* c. 13: 'Ceterum ad liberalitatem principis maxime pertinet, ut et consiliariis, et ministris, et ballivis, et officialibus stipendia quæ ad victum sufficiant prestet: . . . quin ita decet magnificentiam principalem, . . . ut non indigeant, ne aliena immoderate concupiscant vel rapiant.' As Burke says in the same speech: 'An honourable and fair profit is the best security against avarice and rapacity.' Besides their salaries, the Judges had liveries of robes. Under Edward III these were given three times a year, but by the time of Henry VI their number had been reduced to two annually (Foss, u. s., iv. 226; and see above, p. 221). But these, like their salaries, were often in arrear (Rot. Parl. v. 14).

Burke on payment of the Judges.

Danger of corruption.

Liveries of the Judges.

his counsell.] The question of the payment of the Councillors will be discussed later in connexion with Chapter xv, where the whole subject of the Council is dealt with systematically. After the words 'his counsell' D^2, followed by previous editors, inserts the words, 'his Garde, and other servants.' If they were genuine, they would definitely fix the composition of the present treatise to the reign of Edward IV (see Introduction, Part III. pp. 94–6, above). For Edward IV was the first English king to establish that which to the Greeks was one of the chief marks of a tyranny, viz., a body-guard (*τὸ δὴ τυραννικὸν αἴτημα τὸ πολυθρύλητον . . . αἰτεῖν τὸν δῆμον φύλακάς τινας*

Body-guard of Edward IV.

τοῦ σώματος. Plato, Repub. p. 566 B.; comp. Arist. Rhet. I. ii. § 19, ὁ ἐπιβουλεύων τυραννίδι φυλακὴν αἰτεῖ). This was in 1467, and was due to his suspicions of Warwick. See William Worcester's Annals, sub hoc anno: 'Dominus Rex ordinavit sibi cc. valettos probos et valentissimos sagittarios Angliæ, ordinando quod quilibet eorum haberet viij. d. per diem, equitando et attendendo super personam suam propriam' (in Stevenson, Wars, etc., ii. 788). These were the ordinary wages of mounted archers (P. P. C. v. 26). Those of an unmounted archer during the fifteenth century were sixpence a day (ib. i. 174; ii. 158; iv. 72. Rot. Parl. v. 4 b). In 1412, for some reason, the wages of an archer are reckoned at ninepence (P. P. C. ii. 33).

Scotch Marches.

payment of the marches.] Of this tendency to an undue favouring of the wardens of the marches we seem to have a trace in P. P. C. i. 12b ff., where the Privy Council refuse to sanction the indentures which Richard II wished to be drawn up between himself and the Earl Marshal for the custody of Berwick and the East March of Scotland, according to which the Earl was to receive £4,000 in time of peace and £12,000 in time of war. The motives of the Council were: 'Ut in primo parliamento non possit eis imputari quod gratis et voluntarie onerabant Regem et regnum suum in majori summa pecunie quam foret necessarium vel honestum. Ac eciam ut videatur in eodem parliamento subsidium a populo concedendum et per statum Regis qualiter hujusmodi majus onus absque injuria regni sui et populi sui dampno vel gravamine poterit supportari.'

Ordinary estimates for their custody.

The sums suggested were certainly excessive. The ordinary estimates were, in time of peace, for the East March and Berwick £2,500, for the West March and Carlisle £1,250, for the castle of Roxburgh £1,000. In time of war these sums were doubled. These were the estimates in 1421 (P. P. C. ii. 313), and in 1434 (ib. iv. 268–9). Except as to Roxburgh the same is true of 1411 (ib. ii. 8). In 1410 the East March and Berwick on the war footing are estimated at £4,830 for half a year (ib. i. 333); while in the same year the two marches of Scotland and the castles there in time of truce are reckoned at £17,126 for two years (ib. 352). In 1436 Marmaduke Lumley, bishop of Carlisle, undertook the custody of Carlisle and the West March for £1,500 in peace and war alike; although, as is expressly stated, former wardens had been accustomed to receive the sums named above (Rotuli Scotiæ,

ii. 296 b). These payments, like most others, were during the Lancastrian period constantly in arrear. The rebellion of the Percies in 1403 was largely due to the enormous sums, over £20,000 as they alleged, due to them as wardens of the Marches (P. P. C., I. xl–xlii, xlvii–li). Hotspur was warden of the East March, Berwick, and Roxburgh; while his father, the Earl of Northumberland, was warden of Carlisle and the West March (Rot. Scot. ii. 151 a). In Aug. 1403, John, the king's son, afterwards Duke of Bedford, became warden of the East March and Berwick (ib. 164 a). In May, 1414, he reported to his brother Henry V that the town of Berwick was in a very dangerous condition, that there was due to him from the crown £13,100, that he had exhausted all his fortune and all his credit in raising money to pay his soldiers, and that for all the ten years during which he had been warden he had not received one farthing salary (P. P. C. ii. 136–8). In 1449 the debt on Roxburgh alone was £3,500 (Rot. Parl. v. 205 b), while in 1459 it amounted to £4,000 (Rot Scot. ii. 392). From what has been said already it will have been seen that there were generally two wardens (custodes, gardiani,) of the Marches: one of the East or, as it was sometimes called, the North March (La Est Marche, Marchiæ Orientales, Marchiæ Boreales); and one of the West March (La West Marche, Marchiæ Occidentales). To the former was generally attached the command of Berwick, to the latter that of Carlisle. Sometimes both Marches were entrusted to a single warden, or body of wardens. The Earl of Northumberland and three others were thus appointed in 1377 'Custodes Marchiarum . . . versus partes tam orientales quam occidentales;' while in 1384 the earl was appointed sole warden (Rot. Scot. ii. 5 a, 65 b; cf. ib. i. 857, 972). Richard, Earl of Salisbury, was similarly appointed in 1434. Among the minutes of the Privy Council occurs a 'memorandum for commissions to be maade to þerle of Sarum of boþe wardeneryes' (P. P. C. iv. 270; at p. 273 the commissions themselves are found). In 1461 (1 Edward IV) Salisbury's son, Warwick the King-maker, was appointed sole warden and commissary general 'tam in partibus de la Est March, quam in partibus de la West March' (Rot. Scot. ii. 402). In 1463 the East March was made over to Warwick's brother Montague (ib. 407 b). In Aug. 1470, after his open breach with Warwick, Edward appointed his brother, Richard Duke of Gloucester, warden of the West March (ib. 423 b); while in 1483 an Act of Parliament, after

Payments frequently in arrear.

Divisions of the Marches.

East or North March.

West March.

Richard Duke of Gloucester *hereditary* warden of the West March.

reciting how 'the seid Duc . . . late by his manyfold and diligent labours and devoirs, hath subdued grete part of the West bordures of Scotlande . . . by the space of xxx miles and more,' enacts 'that the seid Duc shall have to hym *and to his heires masles of his body comyng*, the seid Wardeynship of the seid Westmerches' (Rot. Parl. vi. 204). The course of history prevented this unprecedented step from having any consequences. But it may readily be imagined that when the Marches were entrusted to such powerful noblemen as Warwick, Montague, and Gloucester, that tendency which Fortescue deprecates, to 'do ffauour to the persones that kepe ham,' might easily become unduly strong. The Croyland Continuator evidently considers the recovery of Berwick by Edward IV a very doubtful benefit, on account of the expense which its custody entailed (p. 563). From these and many other passages which might be quoted, it would seem as if the division of the marches into East and West were an exhaustive one. But we find traces of a third or Middle March (La Middel marche, Marchia media), of which the boundaries were 'alta via que se extendit directe de villa Novi Castri Super Tinam usque Rokesburgh ex una parte et bunda de West March ex alterâ parte.' In a paper of the year 1598 we find the following: 'A breife of the Bounderes, Wayes, and Passages of the Midle March, all a longe the Border of Scotland beginning at Cheveat Hill being the lemyet of the Easte Marche, and ending at Kirsop, the bounder of the Weste Marche of England.' Egerton Papers, Camd. Soc. p. 278. (I owe this reference to T. W. Jackson, Esq., Fellow of Worcester College, Oxford.) Separate bodies of wardens for all three Marches are appointed in 1382 (Rot. Scot. ii. 41 a, 43 b). After 1382 I find no specific reference in the Rolls to the Middle March till 1470. From that time onward to 1512 it is frequently mentioned, but is always found united with the East March (Rot. Scot. ii. 422–3, 428, 442, 463, 470 &c., 576–7). In 1495 Henry VII appointed his second son (afterwards Henry VIII) 'custos generalis Marchiarum . . . viz., in partibus Est marchiarum, West marchiarum, et Middel marchiarum' (ib. 517). I am inclined to think that, in the interval between 1382 and 1470, the warden of the Middle March is represented by the keeper of Roxburgh Castle. The first trace of a warden of the Marches, *eo nomine*, which I have found in the Rotuli Scotiæ (which however only begin in 19 Edw. I) is in 1309, when Robert de Clyfford is appointed 'Custos Marchie Scotie in partibus Karliol' (i. 76 b). But according

Middle March.

First warden of the Marches.

to Nicholson and Burn's History of Westmorland and Cumberland (I. viii.), his first appointment was in 1296. In 1315 we have a 'Custos Karlioli et Marchiæ in Cumbria,' and a 'Custos Novi Castri super Tynam et Marchiæ in Northumbria,' which correspond pretty exactly with the later West and East Marches (Rot. Scot. i. 140–1). Nicholson and Burn (u. s.) trace the first regulation of the borders by distinct laws to the time of Edward I, and to the inveterate hostilities which resulted from his claim to the sovereignty over Scotland. The keeping of the Marches is frequently mentioned in Parliament as one of the objects for which supplies are required (*e.g.* Rot. Parl. iii. 608 b; iv. 4 b, &c.). Burton (Hist. Scotl. iv. 163; sub anno 1566) says: 'On each side of the border there usually were three wardens. . . . The rule was punctiliously observed on the English side, but on the side of Scotland Bothwell was sole warden. It is said by one with good opportunities for knowing that the three wardenships were never before held by one person.' Whatever may have been the case on the Scotch side, we have already seen that this 'rule of three' was by no means always 'punctiliously observed on the English side;' and I have found one instance in which, on the Scotch side also, two of the three Marches are united in the hands of the same man (Rymer, xi. 537). For the divisions and wardens of the Marches on the Scotch side, see R. B. Armstrong, History of Liddesdale, Eskdale, etc., chap. i.). The district over which the authority of the wardens extended comprised the three shires of Northumberland, Cumberland, and Westmorland. In 1453 the Commons complained that 'the wardens of the Marches joyning to Scotland called the Estmarche and the Westmarche . . . sumtyme for thaire singuler lucre, and sumtyme for malice,' have endeavoured to extend their jurisdiction beyond those limits. The king agreed to the passing of a measure to abate the grievance (Rot. Parl. v. 267; cf. St. 31 Hen. VI, c. 3).

Calais. Expense of maintenance.

Caleis, wich charge is welynoghe knowen.] If Fortescue means by this that it was 'well enough known' by sad experience what a terrible drain upon the resources of England the maintenance of Calais was, he is no doubt correct. And the position of Calais was one great motive among others for maintaining good relations with the Low Countries (cf. P. P. C. i. 306; S. C. H. iii. 65). But I cannot observe any general rule as to the expense of Calais, such as we observed in the case of the Scotch Marches.

The following table shows the financial position of Calais during the first half of the fifteenth century so far as I have been able to collect it from the Rolls of Parliament, the Proceedings of the Privy Council, and elsewhere. (Shillings and pence are omitted).

For Year,	Annual Expense.		Amount of Debt.	Authorities.
	In Peace.	In War.		
1401		£13,320		P. P. C. i. 154.
1404	£6,301	£10,509	£11,423	Rot. Parl. iii. 534.
1410	£13,626			P. P. C. i. 352.
1411		£22,500		Ib. ii. 8.
1415	£10,022			Excerpta Hist. pp. 26 ff.
1421		£19,119	£28,718	P. P. C. ii. 8; Rot. Parl. iv. 159.
1433	£11,930		£45,100	Rot. Parl. iv. 434, 438.
1449		..	£19,395	Ib. v. 206; cf. Wars of the English in France, i. 492.

Arrears.

In 1450 £19,395 was due to the Duke of Buckingham as Captain of Calais, while in 1454 £21,648 was owing to his successor the Duke of Somerset, besides a balance still due to Buckingham, the amount of which is not stated (Rot. Parl. v. 207, 233). Under Edward IV and Henry VII the sum allotted to Calais seems to have been regularly £10,022 per annum (ib. vi. 55, 101, 395, 523). The writer of the *Epitome* estimates the annual expense of Calais at £9,807. Perhaps we may say roughly that the cost of Calais was £10,000 in time of peace and £20,000 in time of war.

Appropriation of revenue to Calais.

The revenues of Calais and the Marches amounted in 1433 to £2,866 (Rot. Parl. iv. 434). During the fifteenth century it was generally attempted to meet the charges of Calais by appropriating to it a portion of the subsidy on wools, &c.—sometimes one half (Rymer, viii. 488); sometimes three-quarters (Rot. Parl. iii. 627, 648); sometimes so many shillings on every sack of wool, and every 240 woolfells (P. P. C. ii. 218; iii. 50; Rot. Parl. v. 146). In 1429 the assignments thus made had to be increased, because of the scarcity of wool owing to the recent murrain among the sheep (Rot. Parl. iv. 340). And in 1437 Gloucester, then Captain of Calais, reported that the 'utterance and sale' of wool was likely to be 'so escarse and symple,' that parliament gave authority for other funds to be applied to the maintenance of Calais if it should be

Arrears.

necessary (ib. 499). But all these and many other lesser measures

did not prevent heavy arrears from accumulating, even under Henry V (Ellis's Letters, II. i. 75). On one occasion at least, in 1421, the garrison addressed themselves direct to Parliament, praying for payment of their wages (Rot. Parl. iv. 159). Considering what the arrears were in 1433 (see table), it is not surprising to find that there was a mutiny in Calais in that year (P. P. C., IV. xlvi; cf. Rot. Parl. iv. 473). Money was frequently borrowed on behalf of Calais. In 1436 commissioners were sent into the different counties systematically to raise a loan for this purpose. They were bidden to remind the people 'what a preciouse jeuelle the saide towne of Calais is to this reame' (P. P. C. iv. 352^{b} ff. That this appeal was very liberally responded to appears from Three Fifteenth Century Chronicles, pp. 61–2). The merchants of the staple of Calais were frequent lenders (*e. g.* Rot. Parl. v. 295; P. P. C. v. 26; Cal. Rot. Pat. 293b), and at length under Edward IV and Henry VII the system was adopted of making over to them the customs on all wools and woolfells shipped from England to the staple at Calais for periods of sixteen years; they undertaking the payment of £10,022 to the Treasurer of Calais, and certain other smaller payments (Rot. Parl. vi. 55, 101, 395, 523; cf. St. 19 Hen. VII. c. 27). Besides these financial measures there was a curious system of appropriating certain towns for supplying Calais with victuals. In 1415 Henry V issued an ordinance, which after reciting that the town of Gosseford in Suffolk, which had received various franchises from his ancestors on condition of supplying Calais with beer and other victuals, was unable to supply the requisite amount, granted to the towns of Sandwich, Feversham, Dover, Deal, and Mungeham, a share in the duties and privileges which had formerly belonged exclusively to Gosseford (Rymer, ix. 224). 'The officers of Calais were—(1) the Deputy or Captain; (2) the High Marshall; (3) the Comptroller; (4) the Lieutenant of the Castle; (5) the High Treasurer; (6) The Vice-Treasurer; each having his suite of soldiers and attendants' (Ellis's Letters, II. i. 124). Besides these there were the *Vitellarius* or Victualler, an officer called the Purveyer or *Provisor Villæ Calesiæ*, the Master or Warden of the Mint, &c. (Carte's French and Gascon Rolls, ii. 332, 180, 245). There was the ordinary municipal body consisting of the Mayor, Aldermen, and Burghers (ib. 179); and there were the Mayor, Constables, and Merchants of the Staple (ib. 178, 209). The system of account to be observed at Calais

Loans.

Victualling of Calais.

Officers.

was defined by Parliament in 4 Edward IV (Rot. Parl. v. 510). In Henry VIII's time Calais seems to have been governed, like Ireland, by a 'Deputy and Council' (P. P. C., VII. xx. 5, 79, &c.).

Estimates of the value of Calais to England.

John of Gaunt is said to have declared that 'Caleis greued more Engelond, and dede more hurt therto than profit, for the grete expensis aboute the keping therof' (Engl. Chron. p. 7; cf. ib. 127). But this was by no means the common view. The words used by the government in 1436 represented the general feeling of the people. In 1429 the Commons asserted that 'every trwe Englyshman ought to have (Caleys) in full grete chierte and tendernesse' (Rot. Parl. iv. 360).

The author of the 'Libel of English Policy' is very strong on the imperative necessity of keeping Calais, the whole of England's commercial well-being depending, according to him, on the command of the strait which the possession of Calais gives. He quotes the opinion of Sigismund, who urged Henry V to guard Dover and Calais as the two eyes of England. He devotes a special section of his work to this subject, beginning:—

> 'And for the love of God and of his blisse,
> Cherishe ye Caleise better than it is.'
> (Political Songs, i. 158, 192).

Carrying this idea still further, the Commons in 1420, excited by the marvellous successes of Henry V, petitioned that as he was now master of both sides of the channel he would impose a toll on all vessels passing the straits, to be applied to the keeping of the sea. The king naturally rejected a suggestion, the adoption of which would have united against England every maritime power in Europe (Rot. Parl. v. 126b).

It is unnecessary here to do more than allude to the important advantages which the possession of the Captaincy of Calais gave to Warwick in his machinations both against Henry VI and Edward IV. According to Waurin (ed. Dupont ii. 187) Warwick greatly improved the government of Calais. On the attempts of the Lancastrians to get possession of Calais during the reign of Edward IV, see Introduction, Part II, above, p. 60.

the kynges werkes.] In the accounts of 1411 the sum 'pro reparatione castrorum ac aliorum maneriorum Regis infra regnum Angliæ' is set down as £1000 (P. P. C. ii. 11). In 1433 the king's works ('pro operibus Regis') are estimated at 1000 marks

(Rot. Parl. iv. 435). Fortescue excludes here the 'making of new works' because he reckons them among extraordinary charges in the next chapter.

clerkes off the werkes.] 'Clericus operationum regis.' The functions of this officer are thus negatively described in the *Liber Niger* of Edward IV: 'CLERKE OF WORKES, called by the noble Edward (III) "clerke des œvres du Roy, preignaunt sa gages, fees, et lautre choises appurtenaunte a son office par l'assignement du Thesaurere d'Angleterre et hors le charge de l'oistiel du Roy." This clerke hath no duetie longing to him in this houshold, by vertue of this office outward; but if he be appoynted by the soveraynes of housholde to take wages and cloathinge with the houshold, it mought cause hym to be the more attendaunt for necessary byldynges in offices in this house; and so he may take lyverey as a Squier of houshold' (Ordinances of the Household, p. 53). In the wardrobe accounts of 1423 the Clerk of the Works receives his livery with the Chancellor, Treasurer, Privy Seal, Justices, &c. (English in France, i. 386). Edmund Blake and Thomas Stratton, 'Clerk of oure Werkes' in 1455 and 1461 respectively, are exempted as to their office from the Resumption Acts passed in those years (Rot. Parl. v. 319a, 473b). This office, like everything else, suffered from the 'eternal want of pence' which characterized the Lancastrian period. In 1433 the debts on the office of the clerk of the works were £215 (Rot. Parl. iv. 435), while in 1445 we have a plaintive petition from the then clerk of the works, William Cleve, to the effect that he had already made 'at your Tour of London a kechen with al other maner of offices' without payment, and now he was required to make at Eltham 'a new halle with squillery, saucery, and surveyng place' and divers other works for the Queen's coronation, and he prayed that he might have an assignment of £1000. This person was a cleric, as he calls himself 'youre pouer chapeleyn' (P. P. C. vi. 31). There were inferior clerks of the works in various of the king's manors; thus we hear of the 'Clerk of oure Werkys, of our Manoir and Park of Claryngdon' (Rot. Parl. v. 544b). So William of Wykeham was 'Clerk of all the King's works in his Manors of Henle and Yeshampsted' (Lowth's Life, p. 19). This may account for Fortescue using the plural *clerkes* in this place.

Clerks of the Works

Payments in arrear.

the kynge hath therfore . . . pondage and tonnage.] On the origin of tunnage and poundage, see S. C. H. ii. 528.

Tunnage and Poundage.

Appropriated to the keeping of the sea.

After this form of impost had become the subject of parliamentary concession, the grant of it was early connected with the keeping of the sea, the defence of the coast, &c. Indeed the unauthorized imposition of it by Lionel of Antwerp, in 1347, was 'pur gages des Niefs de guerre' (Rot. Parl. ii. 166 a). In the Parliament of 1372 it was granted by the citizens and burgesses alone 'for the safe and sure conduct of ships and merchandise' (ib. 310 b). From 1373 it was granted in the proper manner. In 1379 and 1383 it was appropriated to the safeguard of the sea (ib. iii. 63; cf. 391, 151 b). During the fifteenth century this became the regular rule, *e.g.*, in 1411, 1414, 1425, 1429, 1432, &c. (Rot. Parl. iii. 648 b; iv. 16 b, 276 a, 337 b, 390 a, &c.). And when in 1415, 1453, and 1463 tunnage and poundage were granted to Henry V, Henry VI, and Edward IV respectively for life, it was to the keeping of the sea that they were appropriated. That this appropriation was very loosely observed, if at all, is clear. It was one of the charges against Suffolk, that he had diverted to other uses subsidies granted for the defence of the realm, and the safe-keeping of the sea (Rot. Parl. v. 180 b). In the manifesto of Robin of Redesdale in 1469, among the many sources of revenue which Edward IV is charged with having alienated to the Wydvilles and their affinity, occurs the mention of 'Tunage and Poundage of alle this londe, graunted only to the kepynge of the see.' And among the demands of the insurgents is one, 'that the revenues of Tounage and Poundage may be employed in the kepyng of the see, as it was graunted, and too non other use.' (Warkworth, pp. 48, 51).

Appropriation not observed.

Prevalence of piracy.

ffor the repressynge off rovers.] The accession of Henry IV seems to have been followed by a great development of piracy, largely owing to the uncertain relations in which the new dynasty stood to foreign powers, especially France and Scotland; so that 'after a short time acts of piracy and rapine became so common that the seas were no longer safe, and the carrying out of legitimate commerce became an impossibility.' (Royal Letters of Henry IV, I. xlviii). In this work the English no doubt took their share. In 1401 the districts of 'Estergo and Westergo' in Frisia (=Ostrachia and Westrachia in Spruner's Atlas, New Edit., Deutschland, No. IX,) complained to Henry IV that the Captain of Calais notoriously kept in his

pay 'publicos Dei et omnium Mercatorum bonorum Inimicos, Pyratas, alio Vocabulo LIKEDELERS nominatos' (Rymer, viii. 193). The name no doubt came from their 'dealing alike' with the ships of all nations, their own included. Just as the contemporary Vitalian Brothers called themselves 'God's friends and the world's foes' (Weber, Weltgesch. viii. 461). In the diplomatic correspondence of the time are found allusions to the interruption of communications, the capture of despatches, &c., by pirates, (Royal Letters, u. s., Bekynton's Correspondence, i. 220-1, 238. According to the 'Libel of English Policy' Brittany was a great home for piracy; Political Songs, ii. 164. For the doings of a Cornish pirate of good birth, Henry Bodrugan, Esquire, under Edward IV, see Rot. Parl. vi. 138 b, and for those of a privateer of Winchelsea under Henry VI, ib. iv. 489 a.) In 1454 we find an account of the capture of an English wine-ship by a body of pirates who, from their names, were evidently English. The booty was shared with the owners and victuallers of the pirate-ships, one of whom was a clergyman (Rymer, xi. 350). Henry V had made an honourable attempt to put an end to this state of things by making all attacks on friendly vessels treason (Rot. Parl. iv. 23; St. 2 Hen. V, 1. c. 6). The restriction was evidently found very irksome, and the Commons more than once petitioned for its removal (Rot. Parl. iv. 350 b, 376 b). And at length in 1435 the statute was suspended for seven years (ib. 493). But attacks on English vessels were not included under this statute; and when the Commons in 1429 and 1431 complained of the injuries done by certain people called 'roveres sur le mere,' and prayed that such doings might be made felony, they were refused (Rot. Parl. iv. 350 b, 376 b). In 26 Henry VI an enquiry into the subject of piracy was ordered (Cal. Rot. Pat. p. 292 a); and in 1449 we find Robert Wynnyngton retained 'to do us service in the sea, for the clensing of the same and rebukying of the robbeurs and pirates therof, whiche dayly do alle the noysance thay canne' (Engl. in France, i. 489). In the 'Brief Latin Chronicle' published by Mr. Gairdner, we find under the year 1457 the following entry, 'spoliata est villa de Fowe in Cornubia per piratas; et eodem anno in mense Augusti spoliata est villa de Sandwiche per piratas, et naves, et pene omnia bona mobilia in utrisque villis abducta sunt' (Three Fifteenth Century Chronicles, p. 166). In the commission of the Earl of Kent as admiral in 1462 he is ordered to capture, arrest, and

Attempts to suppress piracy.

Fishers

punish 'piratas et spoliatores mercatorum et piscatorum tam Anglicorum quam extraneorum' (Rymer, xi. 490). In illustration of this last point, viz., 'the saving of our fishers,' which Fortescue also insists on, compare Paston Letters, iii. 81, (1473): 'We have here no tidings but a few Frenchmen whyrlyng on the coasts, so that there dare no fishers go out but under safe conducts.'

Insecurity of the coasts.

the dwellers vppon owre costes.] It has been shown in the notes to Chapter iii, p. 200, above, how liable to attack the English coasts were before the middle of the sixteenth century. The insecurity of the coasts formed more than once the subject of remonstrance in parliament. Thus in 1442 the commons complained that not only were merchants robbed upon the sea, and even in the ports and estuaries of the kingdom, but the king's poor lieges living near the sea coast were carried off out of their own houses with their chattels and children by the enemy (Rot. Parl. v. 52). In the following year we find this order of the privy council: 'Also be þer maade commissions by alle the costes of þe see withinne Inglonde to putte hem in array' (P. P. C. v. 236). The measures taken for the keeping of the sea in 1454 are prefaced by the recital, that 'diverse the kynges liegemen . . . enhabitauntez nygh the costes of the see, . . . have been often tymes grevously emprysoned, distrussed, put to grete fynaunces and raunsomps' (Rot. Parl. v. 244 b). This insecurity of the coasts is often alluded to in the Paston Letters, *e.g.*, No. 393: 'Also I said I dwelled uppon the cost of the see here, and . . . hit were more necessare to with hold men here than take from hit' (1461). No. 467: 'As for tidyngs here, . . . we have noon but that ther be many Frenchemen upon the see and do moche answer upon the coosts' (1463). To those who blamed John Paston for keeping his eldest son so much at home, it was a plausible answer to give that he was 'at home for the safe gard of the costs' (No. 478, 1473; cf. ib. I. cxxix. f.; II. xiii). The author of the 'Libel of English Policy' also mentions the coast of Norfolk as specially exposed to attack (Political Songs, ii. 164). For instances of attacks on the English coast, see Stowe, pp. 329 b, 330 a, 401 b, 402 a.

Navy.

þat the kynge kepe alway some grete and myghty vessels.] For the early history of the navy see S. C. H. i. 592–4; ii. 286–9, 380. The number of royal ships was however never very large. They served at the most as a sort of nucleus round

which the ships furnished by the different ports might gather. Thus in the list of Edward III's fleet given in the 'Ordinances of the Household,' pp. 6–7, out of a fleet of seven hundred sail, only twenty-five are royal ships, a number not greater than that furnished by the port of London alone. It took in fact very little to convert a merchantman into an effective man-of-war. Owing to that prevalence of piracy already noticed, the ships of the period had to be equally adapted for defence as for commerce. It was in this way that the Hansa, originally a mere commercial league, became the most formidable power in the North of Europe. This was one reason too why the presence of foreign merchants in their dominions was encouraged by sovereigns, especially in England; in the event of war their ships could be seized for belligerent purposes (cf. Sartorius, Gesch. d. Hans. Bundes, i. 138, 289). And where, as in the case of the English wine-trade with the south of France, the nature of the commerce made it possible for the merchantmen to sail in large fleets, they were generally able to take very good care of themselves. In August 1413 Henry V ordered that no ship should go to Aquitaine during that vintage except in this way (Rymer, ix. 47). On such occasions it was usual for the fleet to elect one of their number as their Admiral to whom they swore obedience. The Rolls of Parliament for 1415 contain an interesting petition with reference to John Tutbery, owner of a ship called the Christopher, of Hull, which had been thus elected admiral for the return voyage from Bordeaux, but was deserted by her companions, and so fell into the enemy's hands (iv. 85–6). Bekynton and Roos in their report to Henry VI on the state of Aquitaine in 1442, gave it as their opinion that if only the merchant fleet 'had be souffred to passe hider for the vintaige in suche tyme as they have be accustumed in yers before,' it would have prevented the loss of much of the English possessions (Bekynton's Journal, p. 51). The arresting of merchant shipping for the king's service was however a great interruption to commerce and a source of much oppression. More than one petition occurs on the Rolls of Parliament with reference to the compensation to be made to owners for the time during which their ships were employed in the royal service (Rot. Parl. iii. 554; iv. 79 a).

Merchant shipping used for war.

Merchant fleets organized for self-defence.

In 1406 a curious plan was tried of entrusting to the merchants themselves the safeguard of the sea for a year and five months.

Merchants entrusted with the keeping of the sea.

Tunnage, poundage, and a quarter of the subsidy of wool were made over to them for this purpose. They were allowed to name their own collectors in the various ports; the king appointed the admirals on their nomination, ordering all the chief towns of the kingdom to execute the arrangement. But the plan did not answer, and before the end of this Parliament Henry signified his intention of discharging the merchants (November); he had already in the previous month forbidden the collectors of the subsidies to make any further payments to them. In December their admirals were superseded, and in the next Parliament of 1407 the arrangement was formally wound up (Rot. Parl. iii. 569–571, 602–3, 610; Rymer, viii. 437, 439, 449, 455; cf. Nicolas, Royal Navy, ii. 393). The experiment was not repeated. We find Henry V however consulting the merchants as to the best mode of keeping the sea (P. P. C. ii. 131); and no doubt the town and borough members, as representatives of the mercantile interest in Parliament, would have plenty to say on the subject.

Henry V and the Navy.

Henry V paid great attention to the royal navy. In February 1417 we have a list of his fleet consisting of twenty-four ships: six great ships (under which head are included carraks), eight barges, and ten balingers (P. P. C. ii. 202). Another list later in the same year makes the number twenty-seven. (Nicolas, Agincourt, App. p. 22; or Ellis's Letters, III. i. 72; compare also on Henry V's ships the 'Libel of English Policy,' Political Songs, ii. 199). Henry V's dispositions for keeping the sea from Plymouth Eastward and Northward to Berwick during his first invasion of France in 1415 are in P. P. C. ii. 145. The ships employed are only twelve: two ships, five barges, and five balingers.

A more elaborate scheme for the year 1442 is in Rot. Parl. v. 59 f., where the ships enumerated are eight ships 'with forstages' (forecastles), eight barges, eight balingers, and four spynes (pinnaces). From this it appears moreover that the time during which it was usual to keep the sea was from Candlemas to Martinmas (February 2–November 11); that a mariner's pay was 2*s.* a month, and his rations 14*d.* a week. The ports from which the ships are to be drawn are also mentioned. In 1453 a measure somewhat similar to that of 1406 was adopted: that is to say the keeping of the sea was entrusted for three years to five lords, and tunnage and poundage were made over to them for that period, they being allowed to appoint a collector in every port. In 1455

Keeping of the sea entrusted to certain lords.

however they resigned (Rot. Parl. v. 244 b, 283 a; Paston Letters, i. 293; cf. Engl. in France, ii. 493–4; Carte's French Rolls, ii. 332, where other persons in addition to those enumerated in the Parliament Rolls are mentioned as keeping the sea). In 1457 Warwick was appointed keeper of the sea for three years (Rymer, xi. 406, not for five years as Whethamstede says, i. 330), and in addition to 'all the Tonnage and Pondage' £1000 per annum was assigned to him for this purpose (Rot. Parl. v. 347 b; cf. P. P. C. vi. 294). His rebellion must have terminated this appointment; and, in March 1460, the Duke of Exeter was appointed in his place (Rymer, xi. 448–451; cf. Engl. in France, ii. 512–6). Henry VI's ministers however did not continue Henry V's policy of keeping up the royal navy. Just six months after his death a commission was issued to three persons to sell off such of the king's great ships as they deemed expedient (P. P. C. iii. 53). Capgrave, under the year 1441, bitterly laments the decline of England's maritime prestige. He enumerates, much as Fortescue does, the benefits which would follow from a better keeping of the sea: 'mercatoribus salvum daret conductum, piscatoribus securum accessum, regni habitatoribus pacificam pausationem.' Our enemies, he says, laugh at us and tell us to take the ship off our coins, and replace it by a sheep; the sea was once called the wall of England, but now our enemies have climed over the wall; our ships are scanty, our sailors few and unpractised (De Illustr. Henr. pp. 134–5; cf. Paston Letters, i. 81). The author of the 'Libel of English Policy' bewails the downfall of English naval renown in terms so similar to Capgrave's that I am inclined to think that the latter must have had the 'Libel' before him (cf. Pol. Songs, ii. 159:—

Neglect of the Navy under Henry VI.

> 'Where bene oure shippes? where bene oure swerdes become?
> Owre enmyes bid for the shippe sette a shepe.
> Allas! oure reule halteth, hit is benome;
> Who dare weel say that lordeshyppe shulde take kepe?'

cf. ib. 177; see above, p. 200). Indeed during nearly the whole of the Lancastrian period complaints as to the insecurity of the sea, the consequent loss of merchandise and decrease of the customs are frequent (*e.g.* Rot. Parl. iii. 523 b, 625 a, 639 a; iv. 127 a; v. 52 a; P. P. C. i. 306). But the most vigorous indictment on this point is to be found in Cade's proclamation of 1450: 'Owr sovereyn lord may understond that his fals cowncell hath lost his law, his

marchandyse is lost, . . . the see is lost, Fraunce is lost' (Three Fifteenth Century Chronicles, p. 96; another version in Chronicles of the White Rose, p. 75). Perhaps we may see in this one cause of the downfall of the Lancastrian Dynasty. It had failed to protect 'British Interests.' Edward IV, the merchant king, at least did this, though Warkworth (p. 12) charges him, I know not on what grounds, with 'hurtynge marchandyse;' and the statutes of his reign are concerned almost entirely with matters of trade and commerce, to the exclusion of all higher constitutional and political subjects (S. C. H. iii. 199, 213). As to the expense of the keeping of the sea I have not found many data. Fortescue himself says that 'it is not estimable.' In 1415 the expense of keeping the sea for one quarter and thirty-nine days is put down at £1231 15*s.* 0*d.* (P. P. C. ii. 180), while in 1442 for the fleet described above under that year the estimate is 'for vi moneths for this year £4668; for viii moneths duryng the graunte of Tonage and Poundage, £6090 13*s.* 4*d.* (Rot. Parl. v. 59 b). The fleet for the keeping of the sea was generally divided into two squadrons, one called the Northern or Eastern, or Northern and Eastern Fleet; the other called the Southern or Western, or Southern and Western Fleet. The district from which the former was drawn, and which it was supposed to guard, was from the mouth of the Thames northward to Berwick; the district of the latter was from the Thames southward and westward. The large fleet of Edward III mentioned above was divided in this way; though that of course was intended not merely for the safeguard of the sea but for offensive operations against France. In 1410 we find the sea to be guarded divided into the North, the West, and the narrow sea between Dover and Calais (P. P. C. i. 328). There was also a fleet for Ireland, and another for Aquitaine. The keeping of the Irish Sea which is sometimes mentioned may have been performed by the former of these (Rot. Parl. iii. 625 a, 639 a; P. P. C. ii. 199, 203; Cal. Rot. Pat. pp. 244, 248 a, 305 b). These fleets must always have had their own commanders, and at first these commanders were often independent of one another. But 'after 1406 there was always an Admiral of England, who commanded in chief all the fleets of England, Ireland, and Aquitaine' (Nicolas, Royal Navy, ii. 448). Thus Thomas Beaufort in 10 Henry IV is appointed 'Admirallus flotæ navium tam versus partes boreales et occidentales

Expense of keeping the sea.

Divisions of the fleet.

Admiral of England.

quam versus partes Hiberniæ Aquitaniæ et Picardiæ.' And Richard Duke of Gloucester in 2 Edward IV is 'Admirallus Angliæ Hiberniæ et Aquitaniæ' (Cal. Rot. Pat. pp. 255 b, 305 b).

carrikkes and oþer grete vessailles.] For the various kinds of ship in use at this time, see Sir Harris Nicolas, P. P. C., V. cxxx. ff.; or more fully, Hist. Royal Navy, ii. 158 ff. Several of these occur in the quotations cited in the last note; to which may be added the following passage from Caxton's continuation of Higden: 'In the fourthe yere the duc of Bedford, therle of Marche, and other certayne Lordes . . . foughten on the see ageynst seven carryks of Gene, and fyfty other vessels, as hulkes, barges, galeys and galyetis' (Higden, viii. 552). An unconstitutional commission addressed by Henry IV to various towns ordering them to build certain 'barges and balyngers' was objected to in Parliament 2 Hen. IV, and cancelled (Rot. Parl. iii. 458 a). Kinds of ships.

CHAPTER VII.

a case ouer moch exorbitant.] See above, pp. 216-7, and notes to Chapter viii, pp. 250–1, below.

Ffirst þe kyng shall . . . sende . . . his ambassatours.] The wages of ambassadors varied with their rank, in accordance with which an allowance of so much a day was made to them. The ordinary payments per diem seem to have been as follows:— Wages of ambassadors.

	£	s.	d.	
For a Bishop	3	6	8	P. P. C. iv. 109; vi. 302.
For an Earl	3	6	8	P. P. C. iv. 123 ff.; vi. 302; Rymer, x. 271.
For an Abbot	2	0	0	P. P. C. vi. 302.
For a Baron	2	0	0	P. P. C. iv. 123 ff.; Rymer, xi. 504.
For a Knight Banneret	2	0	0	P. P. C. iv. 109; Engl. in France, II. lxxvi.
For a Knight	1	0	0	P. P. C. iv. 123 ff.; vi. 302.
For Doctors of Law, &c.	1	0	0	P. P. C. iv. 123 ff., 265; vi. 92.

Inferior ambassadors sometimes had £1, sometimes a mark per diem (Rymer, xi. 504; P. P. C. vi. 302). I have not found any instances of payments to Archbishops or Dukes on this score. In 1432 the Archbishop of York (Kemp) was allowed payment at the rate of 1000 marks per annum while ambassador at the Council of Basle, with the proviso that, if during the time of his absence he was

sent on any other mission, he should receive the ordinary wages of an Archbishop. It is not however stated what these were (Rymer, x. 525–6). As a Bishop or Earl received five marks per diem, an Archbishop or Duke would probably have £5; a supposition which is confirmed by the relative wages of these lords as councillors, an Archbishop or a Duke having £200 per annum, a Bishop or an Earl 200 marks. (See notes to Chapter xv, p. 302, below). £5 was the sum allowed to George Neville, Warwick's brother, in 1463, though he was then only Bishop of Exeter, the increased allowance being probably owing to his rank as Chancellor, for as Councillor the Chancellor receives the same wages as an Archbishop or a Duke (Rymer, xi. 504). Besides their wages, ambassadors were allowed 'reasonable costs for the passage and repassage of the sea' (P. P. C. iv. 140–1). In some cases the sums allowed for this purpose are given. They vary of course according to the retinue by which the ambassador is accompanied (*e.g.* Rymer, ix. 189, 205; P. P. C. vi. 53). Frequently a sum of money is advanced ('by apprest,' 'par voie d'apprest,' 'per viam præstiti') to ambassadors on setting out (in some cases a quarter's salary), and then on their return they account with auditors appointed by the exchequer for the sums so advanced, and receive the balance due to them on their accounts (P. P. C. iii. 201; iv. 178; v. 169; Rymer, xi. 53, etc.). Bekynton's account for his mission to Calais in 1439 is printed in his Correspondence, I. cxxii; that of Sir John Popham for his embassy to Brittany in 1438 is in Wars of the Engl. in France, II. lxxv. ff. It is perhaps partly to this system of daily allowances that we owe the elaborate diaries kept by some ambassadors. Two of Bekynton's diaries have been printed: one, of his embassy to Calais in 1439, may be found in P. P. C., v. 334 ff.; the other of his embassy to the Count of Armagnac in 1442 is in his Correspondence, ii. 177 ff. The latter has also been published in a translation by Sir Harris Nicolas (London, 1828). This was the scale of payment, and this the system of account whether the embassy was directed to foreign princes, to pope, or to councils, or to the English government in the conquered districts of France (Engl. in France, II. lxxvii). Conversely, ambassadors from the English government in France to the home government were treated as foreign ambassadors (ib. i. 389 ff.; P. P. C. iv. 122; see below).

Diaries of ambassadors.

It will be seen from what has been said, that the expense under

this head cannot have been light. In the budget of 1433 given above, it is put down at £2626. It was not without plausible reason that Humphrey Duke of Gloucester, in his celebrated manifesto of 1440, protested against the great expense of the fruitless negociations at Arras in 1435, and at Calais in 1439: 'Ther hath ben loste and dispended to notable and to grete a goode by divers ambassiates sent oute of this youre royaume; first to Aras, &c. . . . Item, now late was sent an other ambassiate to Calais, &c. . . . The whiche gode, if it had be emploied for the defence of youre saide royaumes, the merchandize of youre landes might have had other course, and youre saide landes not standen in so grete mischief as they do' (Engl. in France, ii. 444–5. See notes to Chap. xv, p. 318, below for the large sums of money exported to Arras). Nor is it surprising to find that the ambassadors often had considerable difficulty in obtaining payment of the sums due to them. In the minutes of the Privy Council for 1433 it is noted that 'þere lakketh yit a greet part . . . for paiement of þarchebisshope of York and þe Lorde Hungerforde þat be appointede to the generalle conceil' (P. P. C. iv. 159). And in the commissions of several of the ambassadors to that council (Basle), a proviso is inserted that if their wages are not paid they may leave the council (Rymer, x. 528, 531, 532). Bekynton, in 1444, complained that there was still owing to him £189 on account of his embassy of 1442, for which 'he can as yit have no paiement nor assignement, to his grete hurt in þat partie' (P. P. C. vi. 24–5).

Heavy expenditure under this head.

Payments in arrear.

It illustrates the difference between modern and mediæval diplomacy that Fortescue reckons these diplomatic expenses among the extraordinary, and not among the ordinary charges of the crown. But already a change was coming over European diplomacy. The consolidation of the great monarchies, by the falling in of great fiefs or the union of smaller kingdoms which had acted in the Middle Ages as a kind of barrier to keep the nations apart, combined with the growth of that system of international jealousy which is called the Balance of Power, to render diplomatic relations between states closer and more frequent. But the system of permanent resident ambassadors did not come till later. Commynes, who gives elaborate directions for the sending and receiving of ambassadors, evidently regards them as only a superior sort of spy, to be sent about their business as soon as conveniently might be (Liv. iii. c. 8). The system adopted by Louis XI and others, of

Change in the character of diplomacy.

Transition stage. Pensions.

pensioning, as it was delicately called, some member or members of foreign courts, who were expected in return to support the interests of those who pensioned them, may be regarded as a sort of transitional experiment. The system of resident ambassadors

Earliest resident ambassadors. Their character.

begins in England under the Tudors. But these agents were at first taken from a very inferior class, and were miserably paid. The state papers re-echo with their impecunious wails (v. Brewer, Henry VIII, i. 64–8; and compare the complaints of De Puebla, the Spanish ambassador in England under Henry VII: Calendar of Spanish Papers, Suppl. to vols i. and ii. pp. 96, 113, 121). But as the importance of the office increased, so did the dignity of the persons who filled it; and the diplomatic establishment became a recognised item in the ordinary expenditure of the nation.

Projected school of diplomacy and international law.

Henry VIII seems to have had the idea of establishing a regular school of diplomacy and international law. In Waterhous' Fortescutus Illustr. (pp. 539–542) there is a copy of a project drawn up at Henry's command by Thomas Denton, Nicolas Bacon, and Robert Cary for establishing, on the model of the Inns of Court and of Chancery, a house of students where Law and the pure use of Latin and French should be taught; whereby the King might be better served, as well in foreign countries as within the realm. A certain number of students were to be maintained by the King, others might be admitted at their own charges. Instruction was to be provided in French and Latin, and legal discussions were to be held after supper. Whenever the king sent an embassy abroad, one or two of the king's students were to accompany it, in order 'That thereby they may be more expert and meet to serve the king's Majesty in such affairs.' Two of the students were to keep a history or chronicle of the realm, and whenever a war took place on the Continent persons were to be sent to watch and record its events. [This document is followed by another not less interesting, drawn up by the same persons, and describing the actual customs in use at the Inns of Court and Chancery.]

Proctors at the Papal Court the earliest resident diplomatic agents.

to the pope.] These embassies seem not to have been very frequent, owing to the fact that the English monarchs always had a permanent proctor in the court of Rome to look after their interests, who may perhaps be regarded as the earliest instance of a resident diplomatic agent. (For specimens of these appointments see Rymer, ix. 12; x. 266; cf. Devon's Issues of the

Exchequer, pp. 461–2). One of the chief functions of the persons so appointed is to secure the promotion of the king's nominees to vacant sees, etc. Owing to the venality of the court of Rome these relations were a source of continual expense. Specimens of formal missions to Rome are the embassies which Henry VI sent in 1457 and 1459 to offer the profession of his obedience to Calixtus III and Pius II respectively (Rymer, xi. 403, 422. For earlier instances, cf. ib. viii. 446, 479; Issues of the Exchequer, pp. 308, 310, 406).

to the counselles generalles.] In his tract *De titulo Edwardi Comitis Marchiæ* Fortescue brings forward as an argument in favour of the Lancastrian title the fact that the ambassadors of Henry V and Henry VI had been admitted without question to the councils of Constance and Basle (c. 10, Works, p. 69*). Only in the fifteenth century probably would a writer have mentioned the sending of 'messengers and procurators' to general councils as a special item of expense. The first half of the fifteenth century was the great period of the abortive attempt to reform the Church by means of councils, and to transform the papal despotism into a sort of ecclesiastical parliamentary system. Henry IV sent ambassadors to the council of Pisa in 1408, and ordered the clergy of his kingdom to send representatives also (Rymer, viii. 567, ff.). In 1409 he acknowledged Alexander V the Pope of the Pisan council (ib. 604–5), in this not following the policy of his ally, Rupert king of the Romans. The commissions of Henry V to his ambassadors to the council of Constance are in Rymer, ix. 167, 169. In the former of these Henry declares that he would gladly attend in person if he were not otherwise hindered. (For a sketch of the relations of England to the council of Constance see the admirable monograph of Dr. Max Lenz, 'König Sigismund und Heinrich der Fünfte'). The appointment of certain persons as ambassadors to attend the council of Pavia in 1423 (adjourned to Siena in 1424) was agreed upon in the privy council on Feb. 22nd of the former year. It was also agreed two days later that certain other persons should be authorized to demand a place in the council, as representatives of the infant monarch in his capacity as King of France (P. P. C. iii. 42–4; Rymer, x. 269. The journal of Whethamstede, Abbot of St. Alban's, who went to Pavia as one of the representatives of the English clergy, is in Amundesham, i). Ambassadors to the

Councils.

Vain attempt to reform the Church by their means.

Pisa.

Constance.

Pavia.

Basle.

council of Basle seem to have been first appointed in July 1432; perhaps in response to the embassy from Basle which was in England at that time (P. P. C. iv. 123–6; Rymer, x. 519). Others were appointed later. In the following year measures were taken for the despatch thither of representatives of the clergy of England, Ireland, and Guienne (P. P. C. iv. 160). In all these cases the difference is strictly maintained between royal ambassadors and clerical representatives, though occasionally we find a prelate acting in both capacities (P. P. C. iv. 123; Rymer, x. 587). Here also Henry VI appointed ambassadors for his kingdom of France, and protested in vain against their non-admission (Rymer, x. 605; P. P. C. iv. 297–8; Bekynton's Correspondence, ii. 268). Nor were embassies the only expense incurred by the English Government in connexion with the council of Basle. In May 1434 four hundred ducats are entrusted to the ambassadors then setting out, that they may secure the services of a permanent advocate in the council to attend to the king's matters; while in November letters of exchange for 1000 marks were sent to the ambassadors to be distributed in the council for the honour and profit of the king—in plain English, for bribes (P. P. C. iv. 217, 289). At the final breach between the Pope and council, Henry sided with the former, acknowledged his rival council of Ferrara, and ordered his prelates to remove thither, 1437, (Bekynton, ii. 80). Among the minutes of the Privy Council occurs the following interesting entry: 'ambassadeurs to be sende to the general concile, &c., to Ferraire or to Basil wheder þat þe Grekes wol come,' (P. P. C. vi. 91). It is curious that the congress of Mantua, which was expressly intended by Pius II to take the place of the hated councils, and restore in a new form the overlordship of the Pope over secular princes (Droysen, Gesch. d. preuss. Politik, II. i. 147; Palacky, IV. ii. 123 f.), is itself called a 'general council' by Whethamstede (i. 334–6), who gives the names of the ambassadors appointed to attend it. They were however prevented from setting out by the outbreak of civil war in England (cf. P. P. C. vi. 298, 302).

Ferrara.

Congress of Mantua.

Reception of ambassadors.

the kynge shall beyre . . . charges vnknowen in receyvinge off ligates, &c.] The charges on this account fall, as Fortescue says, under two heads; payment of the ambassadors' expenses during their stay in the kingdom, and presents given to them at their departure. Two or three examples will suffice to

illustrate this point. In 1414 £24 14*s.* 3*d.* are allowed for the expenses of certain French ambassadors from May 17 to June 2; and £644 12*s.* 10*d.* for those of the Burgundian ambassadors from April 19 to June 17 (Rymer, ix. 189). In 1427 £40 and 20 marks respectively are given to two ambassadors from the King of the Romans (P. P. C. iii. 280). In 1432 envoys from the council of Basle receive sums varying from £40 to £20. In the same year 50 marks are given to a Papal ambassador (P. P. C. iv. 120–1; Rymer, x. 514–5). In 1478 £40 are given to each of two Spanish ambassadors (Rymer, xii. 92). It was perhaps in the hope of such rewards that in 1426 an impostor, calling himself the Baron of Blakamore, gave himself out as an ambassador from the Emperor. He was however detected, and promptly executed (Amundesham, i. 7). By 'grete communalties' are meant independent republics, such as Florence, Genoa, or Venice (cf. Rymer, viii. 420; ix. 120; P. P. C. ii. 256 ff.; Engl. in France, i. 472).

The expenses of Bedford as Regent of France, in receiving ambassadors there during one year, are set down at 20,000 franks (Engl. in France, ii. [538]).

rewarde such as do . . . to hym seruice.] On rewards in money as opposed to grants of land see notes to Chap. v. pp. 208–9, above. On the inalienability of the royal revenues see notes to Chap. xix, pp. 341–2, below.

new bildynges.] See the notes to the last Chapter, above, p. 230. One item of expenditure under this head which I have discovered is of some interest. In 1413 Henry V granted 1000 marks annually during pleasure for the completion and repair of the nave of Westminster Abbey (Rymer, ix. 78).

Splendour of dress in the fifteenth and sixteenth centuries.

riche clothes, &c.] A taste for splendid dress was eminently characteristic of the fifteenth and sixteenth centuries, and reached its climax perhaps at the Field of the Cloth of Gold in 1520, where many of the English nobility and gentry 'broke their backs with laying manors on 'em,' (Henry VIII, Act I. Sc. i.), and where 'the mediæval age gathered up its departing energies for a last display' (Brewer, Henry VIII, i. 350). On the Continent the lead in this respect was taken by the Burgundian Court. (See Kirk, Charles the Bold, i. 78 ff., 453 ff.). Louis XI on the other hand exhibits in this, as in so many other points, the reaction against the mediæval spirit. His dress, as Commynes says, was 'as bad as bad could be' ('si mal que pis ne povoit;' Liv. ii.

ch. 8). That Edward IV was possessed by this taste for splendid dress in its full extent is shown by his wardrobe accounts, as the editor, Sir Harris Nicolas, remarks, pp. ii–vii. And Fortescue here contemplates further expenditure beyond that included in 'the yerely charges off his wardrober.' The Croyland Continuator also remarks on Edward's taste for magnificent apparel; but he thinks that the appearance of the English court was 'non alia quam quæ excellentissimum Regnum deceat' (p. 563). For the item of furs, specially mentioned by Fortescue, see Wardrobe Accounts, pp. 129, 133, 134; Issues of the Exchequer, p. 494.

serpes.] This is one of the many forms taken by the word *cypress* (=fine linen) in middle English. For this identification I am indebted to the kindness of Professor Skeat. The origin of the word is French *crespe*, whence modern English *crape*. Cresp was translated *crisp*, which became *crips*, and was then re-cast as *cipres*. In Piers Plowman it is spelt as *cypirs*. *Serpes* or *serpis* is therefore for *cirpes*. (See Skeat, Etymological Dict., Ed. 2, or Suppl. to Ed. 1, s.v. Cypress). D^2 not understanding the word, writes *serples*, (surplice), and Cb., going still further a-field, has *pearles!*

Royal jewels in pawn.

rich stones . . . and oþer juels.] Under the Lancastrian kings the royal jewels seem to have been chiefly employed as securities for some of the many loans which those monarchs had to raise, or for wages and other payments due; *e.g.* under Henry IV, P. P. C. ii. 121; under Henry V, ib. iii. 9; Rymer, ix. 284; under Henry VI, P. P. C. v. 132, where the king orders all his royal jewels to be coined, sold, or pledged as quickly as possible for the preservation of his kingdom of France and Duchy of Normandy. This was in 1441. The crown itself was not unfrequently in pawn. In 1430 other jewels had to be pledged to the Abbot of Westminster in order to release the crown which was to be used at the Coronation of Henry as King of France (Rymer, x. 455). In P. P. C. v. 61, and Rymer, xi. 76, we have lists of the jewels given as New Year's gifts by the king in 1437 and 1445. In both these years John Merston was keeper of the royal jewels. The collecting of precious stones seems to have been a perfect passion with Henry VII. Between the seventh and twenty-second years of his reign he spent above £110,000 on them (Exc. Hist., pp. 86–90). The Emperor Frederick III had the same mania. Perhaps they regarded them as a safe investment. The author of the

Henry VII and Frederick III collectors of precious stones.

Epitome, in a marginal note on this passage, asserts that Henry VIII once gave £50,000 for a single jewel.

riche hangynges . . . vessaill.] In June 1468, Edward IV pays £397 for plate, some of which was for his chapel; and £984 for various pieces of arras (Issues of Exchequer, p. 491). The Croyland Continuator says that none of Edward's predecessors equalled him 'in comparandis vasis aureis et argenteis, tapisseriis, ornamentis tam Regalibus quam Ecclesiarum pretiosissimis' (p. 559).

his chapell.] I have not noticed any other instances of extraordinary expenditure on the royal chapel. The officers of the chapels royal formed part of the household, and their salaries therefore came under the head of ordinary expenditure. For the dean, chaplains, clerks, yeomen, and children of the chapel, serjeant yeoman and groom of the vestry, see *Liber Niger*, Edw. IV, Ordinances of the Household, pp. 49–52. They are frequently mentioned in the documents of the period. In Cal. Rot. Pat. p. 267 b (7 Henry V), there is a commission 'de pueris pro capella Regis capiendis.' In P. P. C. iii. 104 the names of the 'schyldren of the schapel' are given (1423). Chapels royal.

horses, &c.] I have found one or two entries illustrating this item of expense. In 1434 four *summarii* (sumpter-horses) cost 20 marks. In 1440 a palfrey costs 13 marks. In 1443 six horses cost £30 (P. P. C. iv. 216; v. 119, 230). In 1454 during Henry's illness an ordinance was issued for the regulation of the royal stables (P. P. C. vi. 210–14). This was probably in connexion with the reform of the household which was made about the same time (see notes to last chapter, p. 220, above). In the *Liber Niger* of Edward IV the annual expense for the purchase of horses and vehicles and repairs is estimated at £520 (Ordinances of the Household, p. 21). In Rot. Parl. v. 154 a, there is a curious petition from the Commons against the proceedings of 'oon William Gerveis . . . cleping hymself the Kyng's Corser' in purveying horses for the king. It was prayed that no one should 'take no Palfrey for the Kyng but of the valu of x. marcs or above; ne Courser but atte the valu of x. li. or above; no charie hors, but at the valu of iiii marcs or above; ne no somer hors, but at the valu of iiii marcs or above.' The petition was refused. This was in 1449. On the enormous stud kept by Edward III, cf. S. C. H. ii. 553. The royal stables.

Special commissions.

comissioners in gret myght . . . to represse . . . riatours, &c.] On the aristocratic turbulence and local disorder which characterized the Lancastrian period, see Introduction, Part I, pp. 11 ff., and Paston Letters, passim. As instances of these special commissions on important occasions the following may be cited. In December 1450, after the rising of Cade, a commission of *oyer and terminer* for Kent and Sussex was issued to the Duke of York, Lord Bourchier, Sir John Fastolf and others (Paston Letters, i. 186). In 1453 Sir William Lucy was sent with others into the North as commissioners to put down the disturbances between Lord Egremont and Sir John Neville (P. P. C. vi. 147–151). In December, 1455, York, then Protector for the second time, was, at the request of the Commons, sent as commissioner into Devonshire, 'notably accompanied,' to put an end to the 'heynous inconveniences' occasioned by the Earl of Devonshire; and various other lords were joined in the commission with him (ib. 267–271). In 1471, after the attempt of the bastard Falconbridge, 'the Lorde Denham and Sere Jhon Fog and dyverse othere (were) made commyssioners, that satt uppon alle Kente, Sussex, and Essex, that were at the Blakhethe,' &c. (Warkworth, p. 21). On the nature and origin of these commissions of *oyer and terminer*, see Palgrave, Essay on the King's Council, §§ xii. xiii.

Royal progresses to put down disorder.

he shall . . . ride in his owne person, &c.] Henry VI appears to have done so after the rising of Cade, etc. in 1450: 'This yere the Kynge went into Kent . . . and sate and did grete justice upon tho that rose with the capteyne; . . . and so þe Kynge wentt . . . westwards to Salisbery, and ther as the Bysshoppe of Salysbery was slayne' (Three Fifteenth Century Chronicles, pp. 68–9, cf. Gregory p. 196). He announced his intention of doing so in the Parliament of 1453: 'Quod in persona sua propria ad diversas Regni partes laborare fuit dispositus, ad illam intentionem et finem quod Manutenentia, Extorsio, Oppressio, Riote, et alia malefacta a tamdiu infra Regnum suum Anglie usitata destruerentur, et factores . . . punirentur' (Rot. Parl. v. 236 b). With this may be compared ib. 382 b, where it is announced that Richard Duke of York, 'vray and rightfull heire of the Reaumes of Englond and Fraunce,' has been appointed 'to ride into the parties of the Realme of Englond and Wales, where rebellions, murdres, riottes, spoilyng, extorsions and oppressions be used, . . . to represse . . . and appese them.' In May, 1470, Earl Rivers was sent by

the advice of the council with thirty men-at-arms and forty foot-soldiers into Kent, 'to suppress divers rebels there assembled' (Issues of the Exchequer, p. 494). So Edward IV, at the request of the Commons in the Parliament of 1472–5, 'sent our Sovereign and Liege Lady the Quene, and the right excellent Prynce your first begoten son, Prynce of Wales, accompayned with many grete Lordes spirituelx and temporelx, and many other notable persones, as well your Juges, as other . . . your commyssioners,' to put down disorders on the marches of Wales. An unusually vigorous protest against the partial proceedings of this commission is in Rot. Parl. vi. 159 f. The Croyland Continuator remarks that after Edward IV's return from his French expedition 'coactus est ipsemet dominus Rex Regnum suum una cum Justitiis suis perlustrare, nemini . . . parcens, . . . si in furto aut homicidio deprehensus existeret. Qua rigorosa justitia . . . publica latrocinia jam diu postea quieverunt' (p. 559).

no man is bounde to serue hym, &c.] If this refers to the question of the king's right to claim the assistance of his subjects in putting down by force internal disturbances of the peace, it is an important enunciation of a constitutional principle. On the question of the right of the Crown to exact military service, which is a very intricate one, see S. C. H. ii. 283–6, 353, 396, 539–543. Much however that is there said refers to foreign service, the exaction of which without payment was unquestionably unconstitutional. The law was fixed by 1 Edw. III, st. 2, c. 5; 18 Edw. III, c. 7, whereby no one was to be called upon to serve outside the limits of his own county, except in case of sudden invasion; and payment by the king was to commence from the time that any force quitted the limits of its own shire. In the Parliament of Sept. 1402 the Commons complained of the frequent breach of these statutes, especially with reference to the troubles in Wales, and they were accordingly re-enacted (Rot. Parl. iii. 501 a; cf. St. 4, Henry IV, c. 13). In 1410 the Commons declared that 'persones defensable de lour corps n'eient en biens dont ils purront . . . defendre de Roialme sans gages' (Rot. Parl. iii. 645 a). Similar abuses were alleged against Henry VI by the Yorkist Lords in 1460: 'that ys to say, every tounshyp to fynde men for the Kynges garde' (Eng. Chron. p. 87). And it was one of the complaints against Edward IV that he caused men 'at every batell to come ferre oute there countries at ther awne coste' (Warkworth, p. 12).

Right of the Crown to military service.

CHAPTER VIII.

Title.] Cf. St. Thomas quoted by Baumann, Staatslehre, pp. 98–9.

Hit is shewid be ffore.] See Chapter vi above, ad init.

the kynge hath livelode . . . sufficient . . . for his ordinarie charges.] All, therefore, that was needed, according to Fortescue, was that this revenue should be made inalienable, or, as he calls it in Chap. xix, 'amortised.' In this way Fortescue would endeavour to satisfy the demand which we so frequently meet with throughout the whole of the mediæval history of England, 'that the king should live of his own;' which meant that the ordinary expenditure should be covered by the ordinary revenue, which is 'what was meant by the king's own' (S. C. H. ii. 551). How far this ideal was realized as a general rule it is very difficult to say, owing to the fact that no distinction is made in the accounts between ordinary and extraordinary expenditure (ib. 545). In 1404 and again in 1410 the Commons petitioned Henry IV that he would 'live of his own.' The answer in both cases was substantially the same: 'the Kyng thanketh hem of here gode desire, willyng put it in execution als sone as he wel may' (Rot. Parl. iii. 549 a, 624 a). The demand was one which was constantly made in the various risings which characterized the period (cf. *e.g.* Engl. Chron. ed. Davies, pp. 86–7). In 1467 Edward IV himself announced to the Commons: 'Y purpose to lyve uppon my nowne; and not to charge my Subgettes but in grete and urgent causes, concernyng more the wele of theym self, . . . than my nowne pleasir' (Rot. Parl. v. 572 a). With this object a resumption act was passed. Before the prorogation the Commons found it expedient to remind the king of the promise which he had made (ib. 618 b); cf. also notes to Chap. v above, pp. 209–210. It was one of Henry V's arguments in favour of the French war, that the increase of his patrimony would enable him to diminish the charges upon his subjects (Rot. Parl. iv. 34 b).

The King to live of his own.

what lyvelod þe kyng hath for . . . his charges extraordinarie.] In Chapter x below, Fortescue discusses the question 'how that the crowne is beste to be indowed,' and comes to the conclusion that it would be best 'yff þe kynge myght haue is livelod, . . in grete lordshippes, maneres, ffee fermys and such

Proposals of Fortescue for the endowment of the Crown.

other demaynes, his people not charged,' (p. 133). From which it would appear, that he desired, that not only the ordinary expenditure, but also the average extraordinary expenditure should be provided for by permanent endowments of the crown. Thus resort to the popular grant would only be necessary (to use Fortescue's own words) 'yff þer shall ffall a case ouer moch exorbitant,' Chap. vii, p. 123; cf. preceding note). It is unnecessary to dwell upon the constitutional importance of this proposal. This is just one of the points in which Fortescue prepares the way for the New Monarchy. Under Edward IV, and still more under the Tudors, this ideal was to a great extent realized, with the result that might have been foreseen; viz. that the national voice was reduced to comparative silence. The experience of the Lancastrian reigns seems to have convinced Fortescue of the necessity of a more liberal and more regular provision for the wants of the State. In this he was undoubtedly right. But it is to be regretted that he and others found the solution of the problem in the practical emancipation of the crown from parliamentary control in financial matters. We have seen (above, p. 195), how a mistake, similar in kind though greater in degree, on the part of the Three Estates in France laid the foundation of the despotism of the French kings. The English Parliament in granting Tunnage and Poundage and the Subsidy on wool to Henry V and Henry VI for life had already taken a serious step in the same direction. The idea that it was possible to have a perfectly regular public revenue, and yet to maintain the proper constitutional control by granting it only annually, had not yet been developed. It seems to have been assumed that an administration must necessarily be precarious which should depend for its existence on supplies voted annually. And yet the annual grant required would not have been very great. Even when the national finances were at their worst in 1433 'a single annual grant of a fifteenth would,' as Dr. Stubbs points out, 'be sufficient to balance revenue and expenditure, and would leave something to pay off the debt' (C. H. iii. 118). And in better times less would probably have sufficed. It is a little hard to see why this sum should not have been granted annually or for short periods, just as was done *e.g.* in the case of Tunnage and Poundage, until the plan was introduced of granting them for life. Had this system, which seems to us so simple, been adopted, England might, humanly speaking, have been spared much bitter conflict.

Their constitutional import.

Revenue for life.

And on the other hand, had Henry VIII been as economical of the resources at his disposal as were Henry VII and Elizabeth, he might have established in England a permanent despotism of the French type. But it is idle to speculate on what might have been. Pecock has a passage in which he insists on the impolicy of making rulers dependent for their livelihood on the grants of the governed (Repressor, p. 394). But Pecock is there speaking of the endowment, not of the Crown, but of the clergy.

Rex datur propter Regnum.

S. Thomas saith, Rex datur, &c.] This is from the Pseudo-Aquinas, *De Regimine*, iii. c. 11, where the writer is discussing the difference between the king and the tyrant: 'Regnum non est propter regem, sed rex propter regnum, quia ad hoc Deus providit de eis, ut regnum regant et gubernent, et unumquemque in suo jure conservent: et hic est finis regiminis: quod si ad aliud faciunt, in se ipsos commodum retorquendo, non sunt reges sed tyranni.' Fortescue quotes this passage again in N. L. N. i. c. 25 (Works p. 86), and in *De Laudibus*, c. 37 ad init. In the instructions to the ambassadors sent to France in 1439, it is argued in favour of peace that 'the princes of bothe partis owe to considere, that God made not his people in the said to remes, ner in other, for the princes; but he made the princes for his service, and for the wele and behove of his people' (P. P. C. v. 357). Waterhous (p. 12) quotes from Ælius Spartianus, Life of Hadrian (c. 8), the remark of that emperor: 'Ita se rempublicam gesturum ut sciret populi rem esse, non propriam,' (cf. next note but two).

þe highest estate temporall.] But all temporal estates are, according to Fortescue, subject to the Pope (see Introduction, Part III, p. 103.

defence and justice.] See notes to Chap. iv. above, pp. 201–3, on the two duties of a king.

Papal style.

servus servorum Dei.] Gregory the Great was the first Pope to assume this title as a rebuke to the pride of the Patriarch of Constantinople, who had taken the title of Universal Bishop (Weber, Allgem. Weltgesch. iv. 816; cf. Higd. Polychr. v. 390). Letters of Gregory with this superscription are in Bede, Hist. Eccl., i. cc. 23–24. But he does not seem to have used it by any means universally. I have glanced through his letters in the fifth volume of Labbè's Concilia without finding a single instance of its use. On this servitude of rulers compare the words of Antigonus to his son, cited by Waterhous (p. 171), from Ælianus Prænes-

tinus, Hist. Var., Lib. ii. c. 20: *οὐκ οἶσθα, ὦ παῖ, τὴν βασιλείαν ἡμῶν ἔνδοξον εἶναι δουλείαν;* Dr. Richard Price, in his sermon 'On the Love of our Country,' which is discussed by Burke at the beginning of his 'Reflections,' proposed that the monarch should be told 'on occasions of congratulation that he is to consider himself more properly the servant than the sovereign of the people.' On which Burke, citing this very parallel of the Papal style, remarks: 'The proudest domination that ever was endured on earth took a title of still greater humility than that which is now proposed for sovereigns by the Apostle of Liberty. Kings and nations were trampled upon by the foot of one calling himself the "servant of servants," and mandates for deposing sovereigns were sealed with the signet of "the Fisherman."' The basis of the title is of course Matth. xx. 27, 'Qui voluerit inter vos primus esse, erit vester servus;' cf. Mark x. 44; cf. also St. Augustine, *De Civ. Dei*, xix. c. 14 (ad finem): 'Sed in domo justi viventis ex fide, et adhuc ab illa cœlesti Civitate peregrinantis, etiam qui imperant, serviunt eis, quibus videntur imperare. Neque enim dominandi cupiditate imperant, sed officio consulendi; nec principandi superbia, sed providendi misericordia.'

nemo debet, &c.] This is from 1 Cor. ix. 7: 'Quis militat suis stipendiis umquam?' Fortescue possibly took the quotation from Pseudo-Aquinas, *De Regimine*, iii. c. 11, as it there follows close on the passage which Fortescue has just cited: 'rex propter regnum,' &c. The writer however keeps closer to the original than Fortescue: 'nemo militat stipendiis suis unquam.'

dignus est operarius, &c.] This is verbatim from Matth. x. 10.

wherfore þe appostill saith . . . bonis.] The whole of this passage is omitted by Lord Fortescue of Credan, who is followed by Lord Clermont. It is however in every MS. that I have examined. The omission was probably due to the recurrence of the word 'wherfore.' The quotation is verbatim from Gal. vi. 6.

moch more be we bounde ther to.] Cp. Burke, 'On Conciliation with America:' 'But what (says the financier) is peace to us without money? Your plan gives us no revenue. No! but it does—for it secures to the subject the power of REFUSAL; the first of all revenues. Experience is a cheat, and fact a liar, if this power in the subject of proportioning his grant or of not granting at all, has not been found the richest mine of revenue

ever discovered by the skill or by the fortune of man' (cf. note to Chap. xii, p. 289, below).

CHAPTER IX.

Need for a better endowment of the crown.

then nedith it þat the kynges livelod . . . be gretter than the livelod off the grettest lorde, &c.] This strikes us as being a very moderate demand, even if we adopt the reading of MS. D^2 and the previous editors 'ij the grettest lordes.' But, when Fortescue goes on to say a little lower down that, in order to realize this ideal, 'it shalbe necessarie þat ther be purveyid ffor the kyng moch gretter livelod than he hath yet,' we have a striking commentary both on the poverty of the crown and on the wealth of the nobles; on both which subjects some remarks will be found elsewhere (see notes to Chap. xiv, p. 295, below; Introduction, Part I, pp. 12–4, 17–8). Still this forms no argument against what was urged in the notes to the last chapter in favour of granting annually whatever sum might be necessary for the proper endowment of the crown.

wich . . . wold be to the kynge right dredefull.] Because, as Fortescue said in Chap. v. above, p. 119, 'his subgettes woll rather goo with a lorde þat is riche and mey pay thair wages and expenses then with thair kynge þat hath noght in his purse.' Or, as he puts it a little lower down in the present chapter, 'the peple will go with hym þat best mey susteyne and rewarde ham.'

mey dispende more.] *i.e.* has a larger income.

Households of great lords.

except an houshold.] The *Liber Niger* of Edward IV gives the composition and estimated expense per annum of the respective households of a king, duke, marquess, earl, viscount, baron, banneret, knight, squire. These figures have been tabulated by Dr. Stubbs in a note to his Const. Hist. (iii. 538), and need not therefore be reproduced here. That even a duke's household costs less than one-third of the king's illustrates Fortescue's remark that a lord's expenses under that head are 'litle in comparison off the kynges.'

the philosopher saith: omnia amamus sed principari maius.] Fortescue cites this quotation also in N. L. N. i. c. 1: 'Hæc questio [of the succession] . . . sermone non minimo

creditur posse absolvi: cum de jure interroget . . . summæ potentiæ, et rei quam maxime in terris desiderat mens humana, dicente Philosopho, *Omnia amamus sed principari magis*' (Works, p. 65). On which Lord Carlingford remarks: 'This has not been identified in Aristotle, but there are passages like it to which Fortescue may allude; as Rhet. i. 38, τὸ δ' ἄρχειν ἥδιστον; and Pol. vii. 14, 17, ὥσπερ οἱ πλεῖστοι τῶν ἀνθρώπων ζητοῦσι τῶν πολλῶν δεσποτεῖν. It is not in the *Auctoritates*.' I believe, on the other hand, that Fortescue has simply misquoted an *Auctoritas* from the seventh book of the Politics, which, in the printed edition of 1488, runs thus: 'omnia amamus magis in principio'; and which the MS. Canonici, Pat. Lat. 62, gives thus, 'omnia amamus, premia magis;' this last being probably a scribal error for the version of the Venice Latin Aristotle of 1483, 'omnia amamus prima magis.' The original is Pol. vii. 17, 13, πάντα γὰρ στέργομεν τὰ πρῶτα μᾶλλον. The instances in which Fortescue's Aristotelian quotations cannot be traced to the *Auctoritates* or some other second-hand source, are so few that I am exceedingly sceptical as to the likelihood of his having had any such general references in his mind as Lord Carlingford supposes, which would imply on his part a tolerable first-hand acquaintance with the works of Aristotle. The Pseudo-Aquinas quotes a similar sentiment from Valerius Maximus: 'Appetitus honoris inest homini. Unde Valerius Maximus dicit, quod nulla est tanta humilitas, quæ hac dulcedine non tangatur.' *De Regimine*, iv. c. 7; cf. ib. c. 20.

Source of the quotation.

Hyldericus . . . dissended off Clodone, &c.] By *Clodone* is meant Clovis or *Chlodwig*, of which name the more modern forms are *Ludwig*, *Louis*, and *Lewis*. He was grandson of Meroveus, from whom the Merovingian dynasty derive their name. Higden in Polychron. i. 276 calls him *Clodoveus*; but in v. 290 he calls him *Clodonius qui et Lodowicus*, which his translator Trevisa gives as *Clodoneus Loweys*. It is possible that *Clodoneus* may have arisen simply from a mis-reading of *Clodoueus*. It is however a very common form. The conversion of Clovis I. to Christianity was due to his victory over the Alemanni at Zülpich in 496 A.D., (cf. Pseudo-Aquinas, *De Regimine*, ii. c. 16). By *Hyldericus* is meant Childeric III, deposed by Pippin the Short in 752 A.D. The story of his deposition is given both in the *Compendium Morale*, f. 34 b, and by Vincent of Beauvais, *De Mor. Inst. Princ.* c. 4. It is alluded to by Pseudo-Aquinas, *De Regimine*, iii. c. 10.

Clovis.

Childeric III.

Though the Merovingian dynasty was not finally set aside till 752, the real power had long been in the hands of Pippin's predecessors, the mayors of the palace (cf. Eginhard, Vita Caroli Magni, c. 1). As to the share of the Pope in the revolution, French political writers are careful to show, in the interest of the independence of the French monarchy, that Zacharias did not depose Childeric, but only gave his consent to his deposition (Riezler, Literarische Widersacher &c., pp. 142–3, 151). *Marcellus* is due to a misreading or miswriting of *Martellus*; *c* and *t* being constantly confused in mediæval MSS. The origin of the name is thus given by William of Malmesbury, i. 98, who is copied by Higden, i. 278: 'Filius Pipini [of Heristal,] fuit Karolus Tudites, quem illi Martellum vocant, quod tyrannos per totam Franciam emergentes contuderit, Saracenos Gallias infestantes egregie depulerit.' It was with special reference to this victory over the Saracens in 732 that the name was given. A poem on the death of Henry V says that he was—

Charles Martel.

'Carolus in quæstu, Clodoveus et in moderatu.'
(Political Songs, ii. 129).

Fall of the Carolingian dynasty.

Charles discended off Carolus Magnus . . . was put from the kyngdome . . . by Hugh Capite.] There is some confusion here; but Fortescue may be excused if he has not succeeded in unravelling the history of the last Carolingian kings of the Western Franks. The last king of that line was Lewis V. He died in 987, under suspicious circumstances it is true; and on his death Hugh Capet was chosen king. The crown was however claimed by Charles Duke of Lower Lotharingia, uncle of Lewis V, who came into the hands of Hugh Capet 990, and died in prison 994. This is probably the Charles intended by Fortescue. But he can hardly be said to have been 'put from the kyngdome,' because he never possessed it. It is possible, though I think less likely, that Fortescue's memory was confused by the earlier struggles of the Capetian house under Hugh Capet's great uncle Odo (or Eudes), Count of Paris, his grandfather Robert, and his father Hugh the Great (Fortescue's Hugo Magnus), against Charles the Simple. The relation of the Capetian house to the later Carolings was not unlike the relation of the Carolingian house to the later Merovings: *i.e.*, they enjoyed the reality before they finally assumed the external garb of power. Fortescue's 'nine or ten generations' are too many, if we are to understand by 'generations' steps in the

pedigree from father to son. On the other hand, if descents of the crown are meant, they are too few. (See the Carolingian Pedigree, *e.g.*, in Kitchin, History of France, i. 97). Fortescue speaks as if Hugh Capet had been the first 'Dux Franciæ.' But according to *L'Art de vérifier les Dates* (ii. 245, ed. 1783–7, fol.), Charles the Bald in 861 conferred 'the Duchy and Marquisate of France' on Robert the Strong, great-grandfather of Hugh Capet (cf. Martin, Hist. de France, ii. 448). On the Duchy of France and the way in which, from 888 to 987, the crown of the Western kingdom oscillated between the Dukes of the French at Paris and the Carolings at Laon, see Freeman, Hist. Geography, pp. 146–7.

and in owre dayis we haue sene a subgett of the Ffrench kynges, &c.] This refers to Charles the Bold, then only Count of Charolais, to the War of the Public Weal, the battle of Montlhéry, the siege of Paris, and the treaty of Conflans, 1465; on all which see Commynes, Liv. i. ch. 2–14. For the special interest of this reference, see Introduction, Part II. p. 66, above. For the treaty of Conflans, see Commynes, ed. Lenglet-Dufresnoy, ii. 500 ff.

We haue also sene late in owre reaume, &c.] This might refer either to the risings of the Duke of York, the Earls of Salisbury and Warwick, etc., against Henry VI, which ended in the establishment of Edward IV on the throne; or to the rebellion of Clarence and Warwick against Edward himself, which led to his expulsion and the brief restoration of Henry VI. If the latter is meant, this chapter must have been written after Fortescue's reconciliation with Edward IV; if the former, it may have been written, as some of the later chapters were in substance written, with a view to the Lancastrian restoration of 1470 (see Introduction, Part III. pp. 94–6, above). On Warwick's offices, see a note on this Chapter below, pp. 262–3, and notes to Chapter xvii; on Clarence's offices and grants see notes to Chapter xi, p. 279, below.

The Erlis of Lecestir and Glocestre, &c.] *i.e.*, Simon de Montfort and Gilbert de Clare at the battle of Lewes, May 14, 1264, where Henry III and his son Edward were taken prisoners.

the kyng off Scottis þat last dyed . . . Erle Douglas.] 'The King of Scots that last died' is James II, who was killed in 1460 by the bursting of a cannon at the siege of Roxburgh Castle. The most recent account of the relations of the Douglases with the crown of Scotland during his reign is contained in the prefaces to the 5th and 6th volumes of the Exchequer Rolls of Scotland, edited

Relations of the Earls of Douglas with the Crown of Scotland.

Murder of Earl Douglas and his brother, 1440.

by George Burnett, Esq., Lyon King of Arms (1882–3). The first act of the tragedy had been played in the previous reign, when William, the sixth Earl of Douglas, and his only brother David were treacherously executed by the orders of Crichton the Chancellor, who at that time shared the powers of the government with Sir Alexander Livingston, the governor of Stirling Castle (1440).

Power and independence of the Douglases.

The motive for this crime was the overgrown power and ostentatious independence of the young earl. 'Galloway, Annandale, and other extensive territories in Scotland, the duchy of Touraine and county of Longueville, in France, yielded revenues perhaps equivalent to those of the Scotish monarch' (Douglas' Peerage, by Wood, i. 428). The duchy of Touraine reverted to the French Crown; but the government of Scotland did not venture to confiscate his Scotch estates. Those which were not male fiefs passed to his sister Margaret, 'the fair maid of Galloway;' the remainder, with the title of Earl of Douglas, to his great-uncle James. The latter's son William (succeeded 1443) re-constituted the power of his house by marrying his cousin the 'fair maid of Galloway.' Besides this, his brother Archibald was Earl of Moray, and his brother Hugh Earl of Ormond. This overgrown power of the house of Douglas, the lawless conduct of the earl, his leagues offensive and defensive with other powerful noblemen, from which the king himself was not excepted; the intrigues of himself and his next brother James, with the English (see their safe-conducts in Rymer, xi. 277, 283–4, 306), alarmed and irritated the king, who summoned him to his presence under a safe-conduct. In the personal altercation that followed, the king stabbed the earl with his own hands (Feb. 1452). James Douglas, his brother and heir, defied the king, and offered his homage to the King of England. (Henry's commission for receiving his homage, dated June 3, 1452, is in Rymer, xi. 310; and troubles on the borders caused by 'suche as belong to the rewle and governance of th' Erle of Duglas' are alluded to in May, 1452; P. P. C. vi. 125). But in August, 1452, the earl submitted, and returned to his allegiance; the king not only receiving him back into favour, but consenting to his marriage with his brother's widow, for which a dispensation was obtained, her previous marriage never having been consummated. But in May 1453 he received a safe-conduct from the English king (Rymer, xi. 326), and in 1454 he rebelled again. Some have supposed that he was aiming at the Scottish Crown. But, says Mr. Burnett, 'he only

Murder of Earl Douglas by the King, 1452. Its consequences.

aimed at the sovereignty of Scotland in the sense of being the most powerful person in the realm. The allegiance of the Earl of Douglas and of some of the other chief magnates who had rights of regality was hardly more than nominal. They had their barons who held of them, their heralds and pursuivants, their councils of retainers analogous to the Parliament of the nation; and they chafed at any interference with their acts by the king, whose authority they were on all occasions disposed to weaken' (u.s. V. cv.). There can, besides, have been little confidence between the Earl of Douglas and the royal assassin of his brother. The distrust was diligently fostered from England, where the earl was in 1453. The revolt broke out, as I have said, in 1454, how is not exactly known. Fortescue seems almost to imply that the initiative was taken by the king. The earl was unsuccessful, and had to fly to England; his brother the Earl of Moray fell in battle; his brother the Earl of Ormond was taken and beheaded (1455). The earl's reception in England is mentioned by the English Chronicle (pp. 70–1). From this time we have to follow his history in English documents. In August 1455 he received an annuity of £500 from the English Government (Engl. in France, ii 503; cf. Rymer, xi. 381, 421). He was exempted by name from the operation of the Resumption Acts of 1455, 1463, 1467, and 1473 (Rot. Parl. v. 310 a, 525 b, 581 b; vi. 76 b), retaining his annuity not only under Edward IV (Rymer, xi. 487; Rot. Parl. ut sup.; Cal. Rot. Pat. 310 a), but also during the brief restoration of Henry VI (Cal. Rot. Pat. 315 b). Under Richard III his annuity was increased by £200 (Rymer, xii. 213, 226). His original connexions in England seem to have been with the Yorkists, but in 1459 he is mentioned as having assisted in their suppression (Rymer, xi. 437). This did not make him less active in assisting Edward IV in his operations against the Lancastrians in the North of England (cf. Three Fifteenth Cent. Chronicles, p. 159: 'Thes been the tydynges sent owt of Scotland that the Erl Dowglas hath done now late in the begynnyng of March, anno Domini M°. cccc. lxij°. The worthy Erle Dowglas hath takyn of the Scottys the Erle of Creyforth, the Lord Lyle of Crayle, Lord Maxon', wardeyn of the West Merchen, &c. . . . numbyr of xvij lordes.') In spite of this, however, he was expressly excluded from the negotiations into which Edward entered with Scotland in the summer of 1462 (see Introduction, Part II. pp. 59–60, above). He was recalled from the borders, 'and as a sorwefull and a sore rebuked man lyth in

Fresh revolt, 1454.

Earl Douglas in England.

the Abbey of S. Albons' (July: Paston Letters, ii. 110–1). In Oct. 1462 Edward promised that he and any Scots who might adhere to him should be expressly included in any truce (Rymer, xi. 492). He seems accordingly to have been active on the borders in 1463, to have gained some successes, but to have been ultimately defeated (Waurin, ed. Dupont, iii. 163, 172–3). In Dec. 1463 he was made Warden of Carrickfergus Castle, in Ireland (Rymer, xi. 510). Edward IV also made him a Knight of the Garter (Paston Letters, ii. 111, *note*). In 1474 a portion of the grants made to him was secured for three years to his executors, in order that he might 'make summe chevesaunce,' *i. e.* raise money on them with a view to accompanying the king to France (Rot. Parl. vi. 132 a). In 1475 he receives a quarter's wages for himself and four men-at-arms on account of the French expedition (Rymer, xi. 844). In 1480 he seems to have been sent to the borders to negotiate with the Scots (Issues of the Exch. p. 500). At the beginning of his reign, Edward IV had a scheme on foot for partitioning Scotland between him and the Earl of Ross, Lord of the Isles. The latter was to have the district north of 'the Scottishe See' (*i. e.* the Forth), the former the district south of that boundary; and both were to hold their dominions in strict feudal dependence on the Crown of England (Rymer, xi. 474, 484). Towards the close of his reign, Edward had another scheme on foot; which was to set up the Duke of Albany, the exiled brother of James III, as King of Scotland in feudal dependence on the English Crown. In this plot also the Earl of Douglas was concerned. His restoration is stipulated for in the agreements between Edward and Albany, and the last document of Edward's reign given by Rymer is a letter of protection for the Earl of Douglas, about to proceed to Scotland on the king's service (Rymer, xii. 156, 172–7). In 1484 he and Albany crossed the border, but with insufficient forces. Albany escaped, but Douglas was taken prisoner. He was brought before James III, and condemned to perpetual retirement in the Abbey of Lindores, where he died in 1488. For the subject of the above note, see, besides the authorities already cited, Burton, Hist. of Scotland, Chapters 28, 29. Various documents relating to Douglas' annuities are in Rymer's MS. Collectanea, Edward IV, vol. i.

His capture by the Scots.

Spayne.] There is a certain fitness in the mention of Spain immediately after Scotland. The history of the three chief king-

doms of the Pyreneean peninsula, Castile, Aragon, and Portugal, constantly reminds us of that of the northern portion of our own island, being filled with the accounts of the violent deeds of kings, of divisions in the royal houses, of long minorities, of aristocratic rebellions and feuds. The following remarks on the power of the nobility in Castile and Aragon are abridged from the Introductory Chapter of Prescott's 'Ferdinand and Isabella.' Characteristics of Spanish history. Predominance of the aristocracy.

In Castile 'the higher nobility (ricos hombres) were exempt from general taxation. They had the right of private war, of renouncing allegiance to, and formally combining in armed confederacy against the crown, whenever they considered themselves aggrieved. They monopolized all the higher offices of state, and secured to themselves the grand masterships of the military orders, which placed at their disposal an immense amount of revenue and patronage. They had vast estates, often won with their own swords from the Moors, on which they ruled like petty monarchs over thousands of vassals. By the middle of the fifteenth century they over-shadowed the throne, and threatened the liberties of the people. The long minorities, from which Castile suffered more perhaps than any country in Europe, threw the government into their hands, and they made use of it to usurp the possessions and invade the prerogatives of the crown.' Castile. In Aragon 'the great barons were fewer and less wealthy than those of Castile, but they enjoyed similar privileges. Private war lingered there longer than in any other country of Christendom, and opposition to the crown was even more highly organized than in Castile.' Aragon. See also Hallam, Middle Ages, Chap. iv. 'In Portugal also the divisions in the royal house, in which were merged the party-struggles of the nobles, make up the larger part of the history' (Weber, Allgem. Weltgesch. viii. 78). Portugal. The acquaintance which Fortescue here shows with the chronicles of Spain is worth noting, because it proves that it is not so 'far-fetched' as Dr. Stubbs (in a note quoted by Lord Carlingford on N. L. N. i. c. 1) thinks, to look to that country for illustrations of Fortescue's words. It should be noted however that if Fortescue uses the term *Spain* here in the same sense in which it is used a little lower down in this chapter, it would include only the kingdom of Castile. Pseudo-Aquinas also mentions the frequency of rebellions in Spain and Hungary, but ascribes them to the violation of the constitu-

tion by the kings: 'si jura regni transcendant,' *De Regimine*, iv. c. 1.

Scandinavian history.

Denmarke.] Perhaps under the name of Denmark Fortescue means to include all the three Scandinavian kingdoms, which at the time he wrote were nominally united in the hands of Christian I. Of the three kingdoms perhaps Sweden suffered most from internal divisions and aristocratic turbulence. 'For more than two centuries, from 1060 onwards, there were civil wars and bloody contests for the crown waged between different families.' Magnus I (†1290) brought a brief improvement. But under his grandson, Magnus II (deposed 1363), 'the power of the magnates increased to such an extent that for the next century Sweden was mainly governed by aristocratic unions.' 'With the election of Albert of Mecklenburg begins a wretched period, during which the crown was worn by foreign puppet-kings, while all the real power was in the hand of the magnates' (Weber, u. s. viii. 452–8). But things were often little better in Denmark. Indeed the whole of Scandinavia's mediæval history seems, to any one who has not made a special study of it, a hopeless tangle. (See a summary of it in Weber, u. s. pp. 423–481).

Jewish history.

the bokis off kynges in holy scripture.] This title would include for Fortescue not only the two books which we still so call, but also I and II Samuel, which are named in the Vulgate I and II Kings: a designation which still survives in the alternative headings in our bibles. So that it is possible that Fortescue means to include the revolts of Absalom (II Sam. xv), and Sheba (ib. xx), as well as the rebellions mentioned in I and II Kings. These were mainly in the kingdom of Israel, which having originated in the rebellion of Jeroboam against Rehoboam (I Kings xii), continued in the same course to the end of its existence. Thus Nadab was dethroned by Baasha (ib. xv. 27), Elah by Zimri, Zimri by Omri, who was in turn opposed by Tibni (ib. xvi. 15–22). Jehoram was supplanted by Jehu (II Kings ix), Zachariah by Shallum, Shallum by Menahem, Pekahiah by Pekah, Pekah by Hoshea, the last king of the kingdom of Israel (ib. xv).

Accumulation of estates by the great nobles: *e. g.* Warwick.

nev dissentes . . . mariages, purchasses, &c.] Of the accumulation of property by various titles, Warwick the kingmaker, the most dangerous subject both of Henry VI and Edward IV, was a signal example, and Fortescue has this example in his mind here. With reference to Warwick's estates and offices, the

fragmentary English chronicle printed at the end of Hearne's edition of Sprott says: 'his insaciable mynde cowde noȝt be content: and yitt bifore him was there none in Englond of the half possessions that he hadde. For first he hadde all the erledom of Warwick hole, with all the Spensers landis: the erledome of Salisbury: grete chamberlayne of Englond, cheff admyrall and capitayne of Calais, and lieutenant of Ireland: the which possessions amountid to the sum of xx. M. marke: and yitt he desirid more' (pp. 299 f.). The earldom of Warwick came to him through his wife (a Beauchamp), the earldom of Salisbury through his mother (a Montacute). His father was third son of Ralph Neville, first Earl of Westmoreland. The chronicler however seems to be wrong in saying that Warwick had inherited *all* the Despensers' lands (see Nicolas' Peerage, s. v. *Despencer*). On the territorial strength of the English nobility generally, see S. C. H. iii. 525–530. 'It is difficult,' he says, 'to over-rate the quantity of land which during the middle ages remained in the hands of the great nobles . . . Taken in the aggregate the landed possessions of the baronage were more than a counterpoise to the whole influence of the crown and the other two estates of the realm.' Ægidius Romanus also advises that excessive accumulations of property should be prevented, *De Regimine*, III. ii. 32. But the object with him is rather social than, as with Fortescue, political. He is urging (after Aristotle) the importance of creating a strong middle-class. (Compare also Introduction, Part I. pp. 17, 37, above).

Territorial strength of the aristocracy.

The term *purchase* is here used in its strictly legal sense, as meaning any mode of acquiring property, other than by descent or hereditary succession. It is used in this sense by Shakespeare, II Henry IV. Act 4, Sc. 4, 200:—

Meaning of the term *purchase*.

> 'What in me was purchased
> Falls upon thee in a more fairer sort;
> So thou the garland wear'st successively.'

(*i.e.* by hereditary succession). So also Ant. and Cleop., Act 1. Sc. 4, 12:—

> 'His faults in him seem as the sports of heaven,
> More fiery by night's blackness; hereditary
> Rather than purchased.'

Ffor such was þe Duke of Lancastre, &c.] On legal grounds however Fortescue is decidedly opposed to John of Gaunt's claim to Castile, because it rested on the basis of female succession. John of Gaunt and his brother Edmund, Duke of

Claim of John of Gaunt to the crown of Castile.

York, married Constance and Isabella, the daughters of Pedro the Cruel by Maria de Padilla, whose legitimacy was, to say the least, highly doubtful. See 'On the Title of the House of York' (Works, p. 497): 'And in like forme the Duke of Lancaster, and the Duke of Yorke, which had wedded two daughters of the house of Spaine, shuld have had that realme, if the crowne therof had been descendable to heires females, as it was not. Wherfore they had never that realme.' Cf. also *De Titulo Edwardi Comitis Marchiæ*, cap. vi. (Works, p. 66*). Notice that here again the term *Spain* is applied to the kingdom of *Castile*, (cf. notes to Chap. iii. p. 199, supra).

CHAPTER X.

myght not . . . dyspende . . . so mich.] *i.e.* had not so large an income.

Dowry of the French queen.

the qwene off Ffraunce, &c.] Note here again Fortescue's fondness for comparing together French and English institutions. As to the dowry of the French queen I have not found any particulars. In the treaty between Edward IV and Louis XI for the marriage of the daughter of the former to the Dauphin (afterwards Charles VIII) it is stipulated that Louis shall give her a dowry 'ad sexaginta millia librarum redditus annui in assieta, secundum consuetudinem regni Franciæ' (Rymer, xii. 20), *i.e.* 60,000 *livres*. But what would be the value of the *livres* here intended I do not know.

Dowry of the English queen.

the qwene off Englond hath x. M. marke.] This was the amount of dowry granted to Joanna the queen of Henry IV, in the fourth year of his reign (Cal. Rot. Pat. p. 247 a). A petition of this queen with reference to her dowry is in Rot. Parl. iii. 532 b (Jan. 1404). And in the October Parliament of the same year a resumption was ordered in her favour of all lands which had formed part of the dowry of Anne of Bohemia, the Queen of Richard II. By the treaty of Troyes the same amount of dowry was settled upon Katharine of France, the wife of Henry V: 'as Quenes of Englond hedir toward wer wont for to take and have; That is to saye to the somme of forty Mill. Scutes be yere; of the whiche Tweyne algates shall be worth a noble Englyssh.' (A noble = 6*s.* 8*d.* = half a mark). Assignments to this amount were made in the Parliament of November, 1422 (Rot. Parl. iv.

183). The assignments for Margaret of Anjou's dowry are in Rot. Parl. v. 118: they also amount to 10,000 marks. Out of this allowance she had to pay £7 per diem towards her share of the expenses of the royal household (Letters of Royal and Illustrious Ladies, i. 98). In the *Liber Niger* of Edward IV the queen is rated for the same daily contribution, which is thus made up; for herself £2 per diem; for 100 servants at 1*s.* per diem, £5: total £7 (Ordinances of the Household, pp. 23–4). According to William Worcester: 'Mense Decembris [1464] rex tenuit magnum concilium Westmonasterii, ubi assignata sunt reginæ Elizabethæ, assensu dominorum, terræ et dominia ad valorem iiij. m. marcarum, et quod ipsa viveret cum familia sua ad expensas domini regis' (Engl. in France, ii. 783). Whether this arrangement was prior or subsequent to the drawing up of the *Liber Niger* I cannot say. In 1406 it had been ordered that the queen should contribute to the household of the king as Philippa, Queen of Edward III, had done; but the amount is not stated (Rot. Parl. iii. 588 a). For the management of her extensive business the queen had her own council, clerk of the council, chancellor, attorney, &c. (Letters, u. s. pp. 97–8; Rymer, xi. 160; Ordinances, u. s. p. 24; Privy Purse Expenses of Elizabeth of York, pp. 100–1). In Dec. 1404 Henry IV grants to his wife 'Novam Turrim ad introitum Ostii Magnæ Aulæ nostræ, infra Palatium nostrum Westmonasteriense . . . pro Consiliis et Negotiis ejusdem Consortis nostræ ibidem tractandis ac Compotis suis audiendis, necnon pro Cartis, Scriptis, Munimentis et aliis evidentiis . . . in eadem custodiendis' (Rymer, viii. 380).

Queen's council, officers, &c.

all the remenant off the reaume, &c.] See the very useful tables in Kitchin's History of France, i. 178–185, showing the gradual growth of the French monarchy by the absorption of the great fiefs or 'lordships,' as Fortescue calls them. The later province of Languedoc was practically identical with the inheritance of Raymond of Toulouse, which was itself made up of the county of Toulouse and the earlier Duchy of Gothia or Narbonne. Part of this was ceded to the French Crown by the treaty of Meaux in 1229, on the conclusion of the Albigensian wars. The remainder fell in in 1271 on the death without children of Alphonso the brother of Louis IX, to whom, under the same treaty, the heiress of Raymond had been married (Martin, Hist. de France, iv. 148–151, 348; cf. v. 70, note).

Absorption of the great fiefs in France.

At the time when Fortescue wrote, no part of Flanders had come to the French Crown. Part of it was conquered by Louis XIV in 1667.

The twelve peers of France.

the Dussepers.] This word is a corruption of *douze pairs*, and refers to the institution of the twelve peers of France. The first occasion on which these twelve peers figured in French history is said to have been the coronation of Philip Augustus in 1179. But Du Cange (s. v. *par*) asserts that the number of the peers had not then been defined, and refers the origin of the institution to Louis IX. The twelve peers were originally the Archbishop of Rheims (premier peer), the Bishops of Laon, Langres, Beauvais, Châlons, Noyon; the Dukes of Normandy, Burgundy, Aquitaine; the Counts of Toulouse, Flanders, and Champagne: *i.e.* six spiritual and six temporal peers. Of the former the three first-named prelates ranked as dukes, the remainder as counts; so that, according to another classification, the peers would consist of six dukes and six counts. But whatever the origin of the institution, there can be no doubt that the development of it was much helped by the diffusion of the *chansons de gestes* which attributed to Charlemagne, and even it would seem to Alexander, the institution of a body of twelve peers. A couplet cited by Du Cange from the *Roman d'Alixandre* runs thus:—

Mythical origin of the institution.

> 'Eslizez douze Pers qui soient compagnon
> Qui menent vos batailles par grant devotion.'

The duties of the peerage are thus set forth in a document of the year 1359, also quoted by Du Cange: 'duodecim Pares, qui regi Franciæ in arduis consiliis et judiciis assisterent, et in factis armorum . . . Regem . . . comitarent.' It has also been suggested that the expression *dussepers*, or *ducypers*, is a corruption of 'ducs et pairs,' but the whole history of the institution is in favour of the other view, which is favoured also by the spelling of several MSS., *dousepiers*, *dusepiers*, &c. And as a matter of fact the peers were not all dukes, though no doubt the expression 'duc et pair' became current in later French. The *Epitome* has a 'a duodecim Paribus.' The word occurs again in the 'Declaracion upon Certayne Wrytinges,' where Fortescue says that the treaty of Troyes was passed 'by thassent and counsell of the more partie of the Doseperes' (Works, p. 529).

the gabell off the salt, &c.] This tax seems to have been

first imposed by Philip VI in the year 1331 to meet the expenses of the war with England, and it was more regularly organized in 1342. It produced however in France all the discontent which Fortescue foretells any attempt to impose it would cause in England. John, Abbot of Laudun (cited by Du Cange, s. v. *gabella*), says: 'En ce meismes an (1342) mist le Roi une exaction au sel, laquelle est appellée Gabelle, dont le Roi aquist l'indignation et malegrace tant des grans comme des petits, et de tout le peuple.' In 1345 the king was obliged to promise that the tax should not be perpetual. It was re-imposed by the Estates General of 1355. But again it proved so unpopular that the same Estates had to repeal it a few months later. It was among the taxes imposed in 1360 for the ransom of King John. From this point its history is the same as that of the other taxes, which has been already traced in the notes to Chap. iii, above, pp. 193–5. It became permanent, and tended to become attached to the royal domain. Waterhous, commenting on the parallel passage in the *De Laudibus*, c. 35, says that the revenue derived from this source was 700,000 crowns per annum, 'yet time hath made this Gabell natural to the French Subjects, as Tunnage and Poundage is here' (pp. 432–3). The name *gabelle*, which in its original signification was applicable to any tax, became restricted in France to this particular impost. The institution of royal granaries of salt, at which alone salt might be purchased, is attributed also to Philip VI. The compulsory sale to every family according to its supposed needs, which Fortescue describes a little lower down, was first begun by Charles V (see on all this Picot, États Généraux, i. 138–141; Martin, v. 138–143, 303–4; Du Cange, u. s.). In May 1418, Henry V, with a view to conciliate his new subjects 'who had been oppressed by grievous gabelles and forced to buy salt against their will at half or two-thirds as much again as it was worth,' abolished the gabelle and system of compulsory purchase, substituting a 'custom' of 25 per cent. on the value of the salt, leaving the trade in other respects free (Rymer, ix. 583–5). But the old system was soon reverted to; in March 1420 the king ordered that 'the impost on the salt and the quartage of all beverages should be levied as had been accustomed previously' (ib. 864). Both the gabelle of salt and the quarterismes or quartage of wine appear frequently in the accounts of Normandy and of France under the administration of the Regent Bedford (Engl. in.

The *Gabelle*.

Its unpopularity.

Royal monopoly

Compulsory purchase.

Tax on wine.

France, ii. 526, 533–4, 547, 550). The tax on wine seems to have been first established in this form under Charles V. It consisted of a tax of one-thirteenth on wine sold wholesale, and one-fourth on wine sold by retail. A tax of one-thirteenth on all wines entering any town had been levied for the ransom of King John (Picot, u. s. pp. 186, 212; Martin, v. 305). According to Monstrelet (iii. f. 86 a) the tax on wine rose gradually from 1 per cent. to 2, 5, 12½, and finally to 25 per cent., where it remained; whence the name of quartage. Louis XI reduced it, at least for a time, to 12½ per cent. (Cont. Monst. f. 9 a). For some very interesting remarks on French finance in the seventeenth century, with special reference to the *gabelle* and the *taille*, see an article in the *Quarterly Review* for October, 1884, pp. 379–384, based in part on the Vicomte d'Avenel's 'Richelieu et la Monarchie absolue.' The amount of the gabelle had been progressively raised, till the price of the article was increased 'to the incredible extent of 6000 per cent. on the original cost.' The quantity which every family was compelled to buy was seven pounds per annum per head, children included.

the tyllyng off the vynes is the grettest comodite, &c.] See the notes to Chapter iii. p. 197, supra.

þat comodite we haue not.] In the tract on the Commodities of England, ascribed to Fortescue, it is said: 'Of all other comodyteys that are in all crysten londys Godd hathe sentt us part in thys reame growynge for the moost substaunce; save only wyne and oylle, for the whyche God hathe sent us agenwarde ryght goode ale and myghty drynke for the comune people' (Works, p. 552). With reference to the consumption of wine in England, Mr. Thorold Rogers says: 'The political severance of Guienne from England involved a doubled price of French wine. As long as England held Guienne, wine was procured at prices so low that it was within the reach of persons who had moderate incomes. When the French king regained it, or rather usurped it, the produce of the country was accessible only to the comparatively wealthy' (Rogers' Gascoigne, p. xxix).

Consumption of wine in England.

Importance of salt in mediæval economy.

the peple . . . vsen moche to salte thair meytes.] I quote Mr. Rogers once more on this point; here again he is speaking of the effects of the loss of Guienne: 'A more serious difficulty was the loss of a cheap market for salt. . . . The importance of salt in the economy of mediæval life was very great. From

November to May the mass of the English people lived on salted provisions. On every fast day salted fish was the customary diet of those who had anything more than bread to eat. . . . Salt was the principal means of preserving food in winter, and was the first condiment at all times. It was . . . derived entirely from solar evaporation. A wet summer raised the price of salt far more than it did that of wheat. . . . It could be procured abundantly and cheaply from the salterns of Western France. Long after the severance of Guienne . . . English monarchs, in their treaties with France, demanded the free export of Gascon salt as a condition of their negotiations' (ut supra, pp. xxix. f; see also Work and Wages, pp. 95–6).

thai woll than at euery mele groche with the kynge, &c.] Contrast the noble words of Sir Robert Peel on quitting office in 1846, after carrying the repeal of the Corn Laws: 'It may be that I shall leave a name sometimes remembered with expressions of good-will in the abodes of those whose lot it is to labour, and to earn their daily bread by the sweat of their brow, when they shall recruit their exhausted strength with abundant and untaxed food, the sweeter because it is no longer leavened with a sense of injustice.'

moche cry, &c.] Cf. Warkworth, p. 22: 'And so the Kynge hade out of Kent myche goode and lytelle luff. Lo, what myschef groys after insurreccion! &c.'

Rehoboam, a common-place of mediæval writers.

Salamon . . . Roboham.] Cf. 1 Kings xii. Here Fortescue puts forward Rehoboam as a warning against financial oppression. In the dialogue between Understanding and Faith, his case is cited as showing that kings may forfeit by misgovernment the Divine commission entrusted to them, and also as an example of the harm which comes from following evil counsel (Works, p. 483). This last is the view taken also in N. L. N. i. c. 23; and it is the stock application throughout the Middle Ages. Not to go beyond English History, Edwy, Edward II, Edward III, Richard II, are in turn compared to Rehoboam by candid chroniclers (v. S. C. H. ii. 365, 505). Bacon, in his essay *Of Counsel*, raises the illustration above the usual level of common-place: 'The beloved kingdom of God was first rent and broken by ill *Counsel*; upon which *Counsel* there are set for our Instruction the two Marks whereby *Bad Counsel* is for ever best discerned: that it was *young Counsel* for the Persons, and *violent Counsel* for the Matter.'

a me factum est istud.] In the Vulgate, I (III) Kings xii. 24, this saying runs: 'a me enim factum est verbum hoc.' In the parallel passage, II Chron. xi. 4, it stands thus: 'quia mea hoc gestum est voluntate.'

yff þe kynge myght haue is livelod. . . in grete lordshippes, &c.] On the importance of this passage, see notes to Chapter viii. above, pp. 250–2.

þer shulde not remeyne lordeshippes, &c.] Fortescue's idea seems to be that the Crown should gradually absorb the great lordships, as was being done on a larger scale by Louis XI in France. A considerable number of earldoms had become concentrated in the house of Lancaster. Henry IV, at his accession, is styled 'Henricus Dux Lancastriæ, Comes Derbiæ, Lincolniæ, Leicestriæ, Herefordiæ, Northamptoniæ, Senescallus Angliæ' (Rymer, viii. 90). Whether he had a right to all these titles seems to be doubted by genealogists (*e.g.* Sir H. Nicolas). Those of Lancaster, Leicester, Lincoln, Derby, were claimed through his mother, Blanche of Lancaster; those of Hereford and Northampton through his first wife, Mary de Bohun (cf. S. C. H. iii. 511–2).

Lord's right of *marriage* under the feudal system.

to hym fallen all þe grete mariages, &c.] The feudal system, at any rate in England, gave the lord a right to be consulted on the marriage of the daughters and other near female relations of his tenants in chivalry ('mecum inde loquatur;' Cart. Hen. I, c. 3). William I had, on the strength of this right, forbidden the marriage of Ralph Guader with the sister of Roger of Hereford, out of which arose the rebellion of the earls in 1074. William II interpreted this right as meaning a right to exact money as the price of his consent; while heiresses and widows were simply sold to the highest bidder. Henry I (u. s.) promises that he will not exact anything for his consent, nor withhold it, 'excepto si eam vellet jungere inimico meo.' Heiresses are to be disposed of by the counsel of the barons, and widows are not to be forced to re-marry against their will. Nothing is said as to any obligation of the latter to obtain the lord's consent to their re-marriage. By the time of Glanvill, the lord's right of interference seems to have been restricted to the case of heiresses; 'sine dominorum dispositione vel assensu nulla mulier, *hæres terræ*, maritari potest.' The motive is still the reasonable one alleged by Henry I: 'ne [dominus] de inimico suo . . . homagium de feodo suo cogatur recipere.' If the lord refuses his consent, 'tenetur . . . justam causam ostendere

quare consentire non debeat.' Widows must obtain their lord's consent on re-marriage (Glanvill, Lib. vii. c. 12). Magna Carta provides against the disparagement of heirs (heredes) in marriage: disparagement being defined by Stat. Mert. cap. 6 as meaning marriage with 'villanis, vel aliis, *sicut burgensibus*.' Widows are protected against compulsory re-marriage, but are required to find security that they will not marry without their lord's consent (M. C. [1216] cc. 6, 7). Blackstone thought that advantage was taken of the ambiguity of the word 'heredes' in M. C. to extend the lord's right of marriage to the case of male heirs under age, where there was no justification for it; but Sir T. D. Hardy has shown that instances of this occur even before the issue of John's Magna Carta (Fine Rolls, pp. xxxvi. f. On the whole subject of marriage fines, see ib. xxix–xli). Anyhow the system, which had originally rested on the reasonable basis of military precaution, was developed as a mere source of profit to the lord. By Stat. Mert. cc. 6, 7, penalties were imposed for any breach of the lord's rights, either by the heir or the heir's relations (cf. Bracton, Lib. ii. c. 38. § 1). These rights continued till the abolition of Military Tenures by the Long Parliament in 1645, confirmed in 1656, and by the Convention Parliament in 1660 (cf. Blackstone, ii. 70–1; Digby, Real Property, pp. 33, 69, 92–4, 314 ff.; S.C.H. i. 300–1). During our present period these rights generally took the form of the exaction of a fine for licence to marry, or imposition of a fine as penalty for having married without the lord's permission. One or two instances may be given: 'Nicolas Thorley, Esq., interrogated before the Privy Council whether he had married the Countess of Oxford, answered *Yes*. Interrogated further, whether he or the countess had obtained the king's licence, answered *No*. All lands of the countess, held of the Crown, seized into the king's hands till she shall have paid a fine at the king's pleasure' (P. P. C. ii. 303, s. a. 1421). 'Lady de Roos, *the king's widow*, having married so far beneath her (tam inhorifice), to pay a fine of at least £1000 (ib. iii. 49, s. a. 1423). 'Thomas Lord de Roos to have licence to marry (maritagium) on payment of 1000 marks' (ib. 130). 'Marriage of Ralph Earl of Westmoreland granted to Sir John Radclyff in payment of the sum of 2000 marks (ib. 204, s. a. 1426). Jacquetta of Luxemburg, widow of John Duke of Bedford, was fined £1000, and the Earl of Oxford £2000, for marrying without the king's licence (Rot. Parl. iv. 498 a,

Fines for licence to marry.

499 b). And no less than 10,000 marks seems to have been exacted from the Earl of March for licence to marry (ib. 465). In 1410 the Commons complained that the age of heirs in chivalry was often returned by the escheators as being less than it really was, with a view to prolonging fraudulently the rights of the Crown to marriage and wardship (ib. iii. 637; cf. iv. 285).

Connexions of the aristocracy with the royal family.

to him bith cosens, &c.] Fully to illustrate this statement would require a book by itself, and far more genealogical knowledge than I can pretend to. I give only a very few illustrations. Besides the two rival lines of York and Lancaster, the following families may be mentioned as connected with the royal house:—The Beauforts through John of Gaunt. The last male Beaufort perished in 1471; through the marriage of Joan, d. of John of Gaunt, with Ralph Neville, first Earl of Westmoreland, the royal blood descended to her son Richard, Earl of Salisbury, father of the King-maker. The Percies (Northumberland) were connected with the royal house by the marriage of Elizabeth Mortimer, grand-daughter of Lionel of Clarence, with Henry Hotspur. The Staffords (Buckingham) by the marriage of Edmund, Earl of Stafford († 1403), with Anne, dau. and heiress of Thomas of Woodstock; the same Anne married subsequently William Bourchier, Count of Eu, whose son Henry became Earl of Essex, and his son Thomas Archbishop of Canterbury. The Mowbrays (Norfolk, Nottingham) were descended from Thomas of Brotherton, son of Edward I (see the pedigree in Rot. Parl. iv. 263, ff.).

Origin of the modern mode of addressing peers.

The modern custom is for the Crown to address all peers, of or above the rank of Earl, as 'trusty and well-beloved cousin.' Mr. Pottinger informs me that this is said to have originated in the reign of Henry IV, and to be due to the wide connexions with the peerage which the house of Lancaster brought to the Crown. Certainly during Richard II's reign the title is only given to those peers who were really related to the king, and in the lists of peers summoned to Parliament the distinction is often expressly mentioned (see *e.g.* Lords' Report, App. i. p. 750). After that reign I do not find any such distinction noted in the lists. But that the title 'consanguineus' or 'cousin' had not become a mere formality, seems proved by a writ of 1 Henry V, in which the Earl of Devon is not so designated (Report, u. s. p. 847). As the first writ on the rolls, the only one given in full, is almost always addressed to

the son, brother, or uncle of the king, they furnish little help towards solving the question). Conversely the title is occasionally given to peers below the rank of earl. In P. P. C. vi. 269 is a list of peers of the year 1455, who are divided into two classes, 'cosins,' and 'not cosins.' Among the former are Lords Fitzwarine and St. Amand, who were only barons. Fitzwarine was a Bourchier (v. s.). What St. Amand's connexion with the royal family was, I do not know.

The king as landowner.

no man hath so many tenantes as he.] On the importance of the king as a landowner, see the interesting remarks of Dr. Stubbs, C. H. iii. 511–2. This importance would of course be greatly increased under Fortescue's system, which contemplated, as we have seen, a very much larger territorial endowment of the crown.

Escheats of treason.

no man may haue the escheittes of treson but hym selff.] 'Conviction for treason or felony corrupted the blood; the effect was the same as if the tenant had died without heirs; the land at once escheated to the lord. This escheat was however subject to the paramount right of the crown, based on other than feudal principles, to forfeiture of the land, in case of conviction for felony, for a year and a day; in the case of conviction for treason, for ever' (Digby, u. s. p. 344). Where the lands were held in chief of the Crown, the king's feudal right to escheat as lord, and his non-feudal right to forfeiture as king, would, as Blackstone remarks, tend to become confused (Blackstone, ii. 251–2).

Fines for licence to alienate.

ther shall non off his tenantes aliene livelod with owt is licence.] The origin of the king's right to a fine for a licence on alienation of lands held in chief is obscure. The first and only restriction on the right of alienation ever made in the interest of the lord, is in the Great Charter of 1217, c. 39, which provides that no tenant shall alienate his land to such an extent as to be unable to discharge the service due to the lord of the fee. 'But about this time [*i.e.* 1217] it was established . . . that the lands held immediately of the king could not be alienated without incurring liability to a fine for a licence of alienation. It continued for a long time to be a question whether such an alienation of lands without licence was a cause of forfeiture to the crown, or whether the king could only distrain for the fine. This doubt was set at rest by 1 Edw. III, st. 2, c. 12, by which it was provided that such alienation . . . should not be a cause of

forfeiture, but a reasonable fine should be taken in the Chancery by due process . . . These fines were abolished by 12 Car. II, c. 24' (Digby, u. s. p. 113; cf. Blackstone, ii. 71–2; Hardy, Fine Rolls, p. xiii). In 1423 we find that certain lands belonging to the late Duke of Clarence were in the king's hands because he had alienated them without licence. The alienees were allowed to recover possession on the payment of 1000 marks (P. P. C. iii. 45). In 1431 John, Earl of Huntingdon, petitioned to be allowed to alienate certain manors, &c. without payment of any fine, because he had been taken prisoner in the king's wars and had had to pay a ransom of 20,000 marks (Rot. Parl. iv. 384–5). In 1426 the commons complained that recent chancellors had restricted the issue of licences of alienation to the king's tenants, and of licences of marriage to 'the king's widows.' Their complaint was not listened to (ib. 306); but in the next Parliament it was agreed that the chancellor should grant licences of alienation for a reasonable fine (ib. 329 a).

he mey not onestly selle is lande.] On the attempts made at various times to prevent the king from alienating his landed property, see the notes to Chap. xix. below.

Chirk. **þe sellynge of Chirke and Chirkes landes.**] The castle and lordship of Chirk in Denbighshire belonged originally to the Mortimers. On the execution of Roger Mortimer in 1330 they were united to the Crown (Cal. Rot. Pat. 110 b). But in 1337 they were granted in fee to Richard Fitzalan, Earl of Arundel (ib. 131). On the execution of his son Richard, Earl of Arundel, in 1397, 'le Chastel de Chirk ove le Seignurie de Chirkeslond a dit Chastel regardantz' were incorporated in the Earldom of Chester, which was erected into a principality, and inalienably appropriated to the eldest son of the king for the time being (Rot. Parl. iii. 353–4; St. 21 Ric. II, c. 9). During the greater part of Henry VI's reign, the Earldom of Chester was, owing to the absence of any heir, in the hands of the Crown. In 1433 all the profits arising 'de dominio de Chirk et Chirkelandes' were assigned to Sir John Radclyff (P. P. C. iv. 155; cf. ib. 199, 298–300; Rot. Parl. v. 440–1). Among the minutes of the Council for February, 1438, we find the following entry: 'Remembre to speke unto þe K' what losse he hathe had by þe graunte þat he maad to Inglefelde of þe constableship and stewardship of þe Castel and lordship of Chirke to þe losse of m[l].

marc' (P. P. C. v. 89 f.). Not long afterwards the king sold 'castrum dominium et maneria de Chyrke et Chyrkelande,' with some other manors in Somerset, Dorset, and Wilts, to Cardinal Beaufort for the sum of £8,900 (Cal. Rot. Pat. p. 280 b). On his death it descended to his nephew Edmund, Earl of Somerset, whose rights to it are expressly saved in the Resumption Act of 1450. It is there stated that 'the Castell and Lordship of Chirk and Kirkland . . . were late purchased by Henry, late Cardinall of Englond, of us by our owen desire, and also by the advice of oure Counseill, and paied therefore to us the uttermost value therof' (Rot. Parl. v. 187). The evidently defensive character of this statement should be noted. This purchase is one of the points objected to Beaufort in the celebrated manifesto which Humphrey of Gloucester put forth in 1440 on the release of the Duke of Orleans: 'the saide cardinal, being of youre counsaille . . . hath late pourchaced . . . certaine gret landes and lyvelode, as the castel and the lordship of Chirk.' He goes on to say that being summoned suddenly to the council, he had assented to this sale against his will in order not to hinder the expedition to Guyenne. It may perhaps a little modify the ordinary view of Gloucester's opposition to Beaufort, when we find that on this point at least Fortescue emphatically supports him. For there can be no doubt, I think, that he is referring to the same transaction. The grant to Beaufort is enrolled under 19 Henry VI (*i. e.* Sept. 1440–Aug. 1441, Cal. Rot. Pat. u. s.), but must have been made earlier, as the exemplification of Gloucester's protest is dated June 2, 1440 (Rymer, x. 764–7). On the attainder of the Beauforts in 1464 (Rot. Parl. v. 511–2), this with their other landed property would be forfeited to the Crown. In 15 Edward IV, that monarch granted the castle, lordship, and manor of 'Chirke and Chirkelandes' to Sir William Stanley and his heirs male, in exchange for certain manors in Craven, Yorkshire (Cal. Rot. Pat. 320 a). Lord Fortescue of Credan very absurdly supposes that Fortescue is here referring to the sale of church-lands (note ad loc.).

Sold to Cardinal Beaufort.

CHAPTER XI.

The holy patriarke Joseph . . . v^th^ parte of thair graynes, &c.] See Genesis xlvii. 18–26; cp. especially v. 26,

which was probably in Fortescue's mind: 'Ex eo tempore usque in præsentem diem, in universa Terra Ægypti, regibus quinta pars solvitur, et factum est quasi in legem absque terra sacerdotali quæ libera ab hac conditione fuit.' Joseph's 'land settlement' is quoted also by Pseudo-Aquinas but with a different object, viz. to prove the inalienability of ecclesiastical property. *De Regimine*, iv. c. 12.

Egypt under the second Memlook Dynasty.

the Saudayn of Babilon.] Egypt, at the time that Fortescue wrote, was under the second or Circassian Dynasty of Memlook Sultans; the reigning monarch being Quayt-Bay (1467–1495), a good and able ruler, who successfully resisted the Turks, and delayed for some time the Turkish conquest of Egypt, which took place ultimately in 1517. These are the rulers whom Fortescue calls 'Sultans of Babylon.' Babylon of Egypt occupied the site which is now called Old Cairo, a little to the S.W. of the later city. 'The name Babylon of Egypt, or Babylon simply, is frequently employed in mediæval writings as synonymous with Cairo, or as denoting the successive Mahometan dynasties of Egypt. This use may have been influenced by the association of the other Babylon, as represented by Baghdad, with the power of Islam; but at the same time it was a real survival of the ancient name' (Encycl. Brit. s. v. *Cairo*). I must leave it to Eygptologists to decide how far the financial system of Joseph had descended intact, as Fortescue asserts, to the fifteenth century of our era. (perhaps the assertion rests only on the words of Genesis, 'usque in præsentem diem:' v. s.); how far also his statement is true that the Egyptian commons were then 'the richest commons of the world.' If so, their position must have sadly changed for the worse in the interval. In Whethamstede, i. 269 ff., are letters said to have been sent by the Sultan of Egypt to Pope Calixtus III and by the Pope to the Sultan in reply. At the end of the 'Letters of Margaret of Anjou' there is an extraordinary parody of a Mahometan manifesto, purporting to come from the 'Sowdane of Surrey (Syria), Emperour of Babilon.' A document which purports to be a letter of the Sultan of Babylon to Charles VII of France is in De Coussy, ch. xxi. (ed. Buchon, pp. 32–3); another from the same potentate to Pope Innocent VIII is in Arnold's Chronicle, pp. 159 ff.

Babylon or Old Cairo.

The Ffrench kyng . . . in wyne, &c.] See notes to last Chapter, p. 268 above.

the kynge . . . hade . . . livelod . . . nerehand to . . . þe v^th^ parte off is reaume.] See notes to last Chapter, p. 273 above, on the importance of the king as landowner. The landed possessions of the Crown must have been largely increased under Edward IV by the Lancastrian forfeitures, especially after the final defeat of the Lancastrians at Tewkesbury. And it is probable that it is to this that Fortescue is referring here. This was the case to a still greater extent under the Tudors. Besides the numerous confiscations which followed the various rebellions, the union of York and Lancaster in the person of Henry VII was, as Mr. Brewer remarks, not merely a union of claims, but also of estates (Henry VIII. i. 70).

The King as landowner.

Union of estates under the Tudors.

aboff the possescions off þe chirche.] *i.e.* not counting the possessions of the church. The *Epitome* translates: 'possessionibus ecclesiæ demptis.'

to some parte þeroff the eyres . . . be restored.] 'The landowner had a stake in the country, a material security for his good behaviour; if he offended against the law or the government, he might forfeit his land; but the land was not lost sight of, and the moral and social claims of the family which had possessed it were not barred by forfeiture. The restoration of the heirs of the dispossessed was an invariable result or condition of every political pacification; and very few estates were alienated from the direct line of inheritance by one forfeiture only' (S. C. H. iii. 610). Compare in further illustration of the statement, the petitions for reversal of attainder granted in 1472, which occupy more than sixteen folio pages (Rot. Parl. vi. 16–33).

Restoration of forfeited Estates.

some bi reason off tayles.] *i.e.* entails. Estates *in fee tail* or *estates tail* were the creation of the Statute *De Donis Conditionalibus*. The history of that Statute, and of the attempts of the lawyers to evade it, may be read in Blackstone, ii. 109–119; Digby, u. s. pp. 153–9, 176–184. 'By allowing the donor to limit the descent of the lands which he granted to the donee and a particular class of heirs (*e.g.* heirs male of his body), and protecting strictly the donor's right to the reversion of the land in case of failure of such heirs, this Statute created a new species of estates of inheritance, which . . . could not be alienated so as to defeat the expectant interest of the heir, or postpone the reversion of the lord' (Digby, p. 155). In other words, the tenant in fee tail had only a life interest in his estate. He could not therefore forfeit a

Entails created by Stat. *De donis conditionalibus.*

Entailed estates could not be permanently forfeited.

greater interest than he possessed. Consequently lands held in fee tail could only be forfeited, even for treason, during the lifetime of the tenant who committed the treason. On his death, they reverted to the heir, or, if there were no heir, to the lord of the fee, the representative of the original donor. 'As the nobility were always fond of this Statute, because it preserved their estates from forfeiture, there was little hope of procuring a repeal from the legislature; and therefore . . . Edward IV, observing . . . how little effect attainders for treason had on families, whose estates were protected by . . . entails, gave his countenance to the application of common recoveries to evade it' (Blackstone, u. s. pp. 116–7).

Illustrations.

Several illustrations of this point may be found on the Rolls of Parliament. In 1423 it was declared in Parliament that Henry V on his death-bed had been greatly troubled in conscience, because he had granted away certain forfeitures of Henry Lord Le Scrope of Masham, which were asserted to be entailed. The grantees were willing to give them up if the fact were so; but this was hotly contested. It was decided that the question of fact should be tried at Common Law (Rot. Parl. iv. 212–13). In 1425 the question was settled in favour of John Le Scrope, brother and heir of Henry (ib. 287; cf. v. 41). So in the Parliament of 1439 it was declared afresh that the Percy forfeitures of Henry IV's reign did not apply to (1) lands in which the Percies were enfeoffed to the use of others only; (2) to lands held in fee tail (ib. v. 11). In the case of Sir William Oldhall, this provision was expressly introduced into the Act of Attainder (ib. 265). Cp. the similar proviso in St. 9 Hen. VI, c. 3, which confirms the proceedings against Owen Glendower.

Principle of permanent endowments for public services.

it be sate the kynges magnyficence to make thair rewardes everlastynge in their heyres.] Edward IV in his will expressly charges his son not to disturb the grants which he had made to those who 'have faithfully and lovingly assisted us, and put thaim in the extreme jeopardie of thair lyves, losses of thair lands and goods, in assisting us, as well aboute the recoverie of oure Corone and Reame of England, as other diverses seasons and tymes of jeopardie' (Excerpta Hist. p. 377). In Rymer, xi. 727, is a warm testimony from Edward IV to his brother-in-law, Earl Rivers, for his fidelity in this respect. The principle here laid down, though discredited in modern times, has the high authority of Burke in its favour, who, in his speech on the Economical

Reform, speaks of 'the constitutional policy of furnishing a permanent reward to publick service; of making that reward the origin of families, and the foundation of wealth as well as of honours.' Approved by Burke.

the kyng hath geven parte . . . to his . . . brotherryn] If the king here mentioned be Henry VI, the persons intended must be his half-brothers, Edmund Tudor, Earl of Richmond, and Jasper, Earl of Pembroke. And this is the view taken by Mr. Francis Hargrave, the well-known legal writer, in a marginal note on this passage in his copy of Fortescue's Monarchy, now in the British Museum. But as (among other reasons) Edmund Tudor died in 1456, it is much more probable that Fortescue is referring to George, Duke of Clarence, and Richard, Duke of Gloucester, the brothers of Edward IV. Innumerable grants to Clarence and Gloucester will be found scattered up and down the Calendar of Patent Rolls, pp. 303–8, 311, 314–325. The mere catalogue of them would fill several pages.

Neuerthelesse somme men haue done hym seruice, &c.] On all this, cf. App. B. § 1, and notes to Chap. v. pp. 208–9 above; cf. also Chap. vii.

yff suche gyftis . . . were refourmed.] Reformed, *i. e.* resumed. In proposing an act of resumption Fortescue was not proposing anything new in English history. The surrender of royal demesnes was insisted on by Henry II, after the troubles of Stephen's reign; 'charters were produced and services pleaded in vain.' It was again enforced by Hubert de Burgh during the minority of Henry III, and by the baronial government of 1258 (S. C. H. i. 451–2; ii. 32, 78, 554–6). In the very first Parliament of Henry IV the Commons demanded that all lands which had formed part of the royal demesnes under Edward III or Richard II should be resumed. Real services to the crown might be rewarded with grants for term of life (Rot. Parl. iii. 433). This was refused. Henry could not afford to offend the great lords to whom he largely owed his throne. But in 1404 he agreed to a scheme which was drawn very much on the lines which Fortescue here lays down. The Commons prayed that all grants made since 40 Edward III might be resumed. Grants made prior to that date were to be confirmed, but if they reverted to the crown they were not to be re-granted. Grants of lands or annuities for term of years or life are not to be resumed, but the grantees are to surrender one year's profits to the king. All Resumption Acts.

holders of such grants are however to bring in their patents for examination. Those who have done good service are to keep their grants, those who have not so deserved are to forfeit them, those who have received more than they deserve are to have their grants moderated by the king in council. The king in his reply, which, it is expressly noted, was made 'en Engleis,' promised 'to assigne certeyn Lordes spirituell, and certeyn Lordes temporell, and alle his Justices and Sergeantz,' &c. to carry out this scheme as far as was consistent with the law of the land and the royal prerogative (Rot. Parl. iii. 547–9). But apparently this was merely a mode of shelving the question. For according to Stowe (p. 331), the resumption was defeated by a combination of the prelates with the secular lords, in return for the aid given by the latter in resisting the demand made in the same Parliament for the secularization of ecclesiastical property. In 1443 the Lieutenant of Ireland was ordered to summon 'þe iij estatz of his saide lande,' and try and obtain a resumption act, 'considerede þe gret neede þat þe Kyng hathe to goode' (P. P. C. v. 297). A resumption act was passed in 1450 on account of the 'grete and grevouse' debts of the crown (Rot. Parl. v. 183 ff.; cf. ib. 267, and Gascoigne, p. 190: 'Parliamentum . . . dixit, quod nunquam concederet taxam regi, nisi prius rex . . . auctoritate parliamenti . . . resumeret omnia . . . quæ prius . . . alienaverat a sua corona'). Another resumption act was passed in 1455, because the king was 'indetted in such outragious sommez, as be not easy to be paied' (Rot. Parl. v. 300 ff.). An act for resuming grants made out of the local revenues of the counties was thrown out by the lords (ib. 328). The original act of resumption is in English; Whethamstede (i. 250 ff.) gives a version of it in Latin. And then follows an interesting account of how the Abbey of St. Alban's obtained exemption from the operation of the act. The Abbot (Whethamstede) sent the Prior up to London, who obtained a copy of the bill, and succeeded in procuring the insertion in it of a proviso excepting the Abbey from its operation (ib. 259 f.; Rot. Parl. v. 307). But when this proviso was examined in the court of exchequer it was found to be insufficient, and was cancelled. Then the Abbot, by means of a member of the king's council who was also a high official in the exchequer, got letters of exemption passed under the great seal, though somewhat less in extent, 'ob pauperiem regis' (Whet. u. s. pp. 258–268). Under

Exemptions from their operation.

Edward IV four resumption acts were passed, viz. in 1461, 1467, 1473, and 1483. The object of that in 1467 is stated by William of Worcester to have been 'ut rex haberet unde viveret, et quod justitia plus solito fieret' (Annales, p. 786). The exemptions from it cover forty folio pages. And the numerous exceptions always made must have rendered these acts comparatively ineffectual (Rot. Parl. v. 462 ff., 572 ff.; vi. 71 ff., 198 ff.; cf. Cont. Croyl. 559). It is true that Hardyng says of the act of 1450,

> 'Then taxe ceased and dymes eke also,
> In all Englande then raysed were no mo,'

(ed. Ellis, p. 401). But this is a very ideal statement.

CHAPTER XII.

Tyranny impoverishes its subjects.

it were good . . . þat the commons . . . were made pore, &c.] Here again Burke is at one with Fortescue: 'When I consider, that we have colonies for no purpose but to be serviceable to us, it seems to my poor understanding a little preposterous, to make them unserviceable in order to keep them obedient. It is, in truth, nothing more than the old, and as I thought, exploded problem of tyranny, which proposes to beggar its subjects into submission. But remember . . . that discontent will increase with misery; and that there are critical moments in the fortunes of all states, when they who are too weak to contribute to your prosperity, may be strong enough to complete your ruin. *Spoliatis arma supersunt*' (On Conciliation with America). And Aristotle says: τὸ πένητας ποιεῖν τοὺς ἀρχομένους, τυραννικόν (Pol. v. 11. § 8; cf. St. Thomas on this passage in Baumann, Staatslehre, &c., p. 139). And Ægidius Romanus, following Aristotle, enumerates among the *cautelæ* of tyrants, 'ut sint (subditi) adeo depauperati et afflicti, ut contra eos non possint insurgere.' *De Regimine*, III. ii. 11. 'þat þei ben so pore, and so ouersette, þat thei mowe not rise aȝenst tirauntes' (MS. Digb. 223, f. 139 d).

as be the commons off Ffraunce.] See notes to Chapter iii. p. 197 above.

as now thai done oftentymes.] On the frequency of local risings and disturbances under the Lancastrian kings, and during

the first period of Edward IV's reign, see Introduction, Part I. pp. 11 ff. Even in the second half of that reign the Croyland Continuator says that the people would have risen if they could only have found a leader, so great was the discontent at the inglorious result of Edward's expedition to France (p. 559).

ad pauca respicientes de facili enunciant.] This is an *auctoritas* from the first book of the *De Generatione et Corruptione*. It agrees with the printed edition, except that the latter omits the preposition *ad*. The original runs thus: '*πρὸς ὀλίγα βλέψαντες, ἀποφαίνονται ῥᾷον*. The reference is i. 2, § 10. Amundesham (i. 371) has a phrase which seems to be a reminiscence of this *auctoritas*: 'quasi vir ad pauca respiciens et de facili plura pronuncians.' Dante speaks of persons ('che sono come quasi tutti') who 'tosto veggiono tutto ciò che possono, e giudicano secondo la loro veduta' (Convito, i. c. 4).

Importance of archery.

wheroff the myght stondith most vppon archers.] This was a lesson which had been impressed upon the English by the events of the Anglo-French wars, and similar sentiments are often embodied in the preambles to the various petitions and Statutes which deal with the subject of archery, &c. The Statute of 12 Ric. II. c. 6, had enacted that all servants and labourers should have bows and arrows, and practise shooting on Sundays and festivals, and leave 'les jeues as pelotes si bien a meyn come a piee, et les autres jeues appellez Coytes, dyces, gettre de pere, keyles, et autres tielx jeues importunes.' This Statute was, on the petition of the Commons, amended by 11 Hen. IV. c. 4 (cf. Rot. Parl. iii. 643), and made still more stringent by 17 Edw. IV. c. 3. The petition of the Commons on which this last-named Statute was based recites, almost in Fortescue's words, that 'the defense of this Lond stondeth moche by Archers.' The unlawful games there enumerated, besides 'Dise, Coyte, Fote-ball, and such like Pleys,' are 'dyvers newe ymagyned Pleys, called Closhe, Keyles, half-Bowle, Handyn and Handowte, and Quekeborde' (Rot. Parl. vi. 188). This tendency to play unlawful games instead of shooting, 'which shotyng . . . hath bee grete defense to this your Reame bothe inward and outward,' is in the Parliament of 1472-5 ascribed to the 'outragious price' of bow-staves; and measures were taken then and in the Parliament of 1482 to remedy this by making the import of bow-staves compulsory, and by fixing their price (Rot. Parl. vi. 156, 223; St. 12 Edw. IV, c. 2; 22 Edw. IV, c. 4; cf.

Its practice enjoined by Statute.

Bow-staves.

St. 1 Ric. III, c. 11). In 1406 a Statute was passed against arrow-smiths who make faulty arrow-heads (St. 7 Hen IV, c. 7; cf. Rot. Parl. iii. 594 b). By 4 Hen. V, St. 2, c. 3, Paten-makers are forbidden to make clogs or patens of 'aspe,' because it is required for making arrows. But this Statute was repealed by St. 4 Edw. IV, c. 9. In 1418 Henry V orders the sheriffs of twenty-eight counties to furnish him with 1,190,000 feathers for making arrows (Rymer, ix. 653; cf. ib. 436, where the feathers are ordered to be goose-wing feathers, six from each goose). An elaborate Statute enforcing the practice of archery was passed in 33 Henry VIII (c. 9.), by which time new unlawful games had been invented. The price of bow-staves was regulated as late as 21 Jac. I. c. 28), which seems to be the last Statute on the subject. From the Issues of the Exchequer (p. 318), it appears that in 1412 the price of a bow was 1*s.* 3*d.*; of a sheaf of arrows, 1*s.* 9*d.*; of a gross of bow-strings, 6*s.* We hear of a keeper of the king's bows within the Tower of London (Cal. Rot. Pat. 318 a). According to Blondel (Reductio Normanniæ, p. 48), the institution of the francs-archers in France (see notes to Chap. iii. p. 197 above) was established partly because it was 'in rusticos Angliæ sagittarios necessarium.' According to Cont. Croyl. (p. 555), the chief supplies of archers came from Lancashire and Cheshire, and this was one reason for the anxiety of the Lancastrians to gain those parts, when they were overtaken and defeated at the battle of Tewkesbury. Arrows and arrow-heads.

thai shulde not haue wherwith to bie hem . . . armour, &c.] The obligation of the citizen to provide himself with arms offensive and defensive in proportion to his means, for the defence of the land and the maintenance of the peace, forms the subject of a series of measures which commence with the Assize of Arms under Henry II, and culminate in the Statute of Winchester under Edward I. That the latter Statute was in full working at this time is shown by the fact, that in 1437 copies of it were sent to all the sheriffs, with orders to enforce it against the 'greet routes and divers conventicules of mysgoeverned men assembled in diverse places' (P. P. C. v. 83 f.).

considerynge þat we be a Ilelonde, &c.] See notes to Chapter iii. p. 200, above.

how than yff a myghty man made a rysinge, &c.] This is the great danger perpetually recurring to Fortescue's mind. See above, Chapter ix.

euery yere to be mustered.] Under the Statute of Winchester (confirmed by 2 Edw. III, c. 6), the view of armour was to be taken twice a year by the constables of every hundred. These are probably the musters to which Fortescue is here referring.

Insurrections caused by poverty.

the pouerest men . . . haue be þe grettest causers, &c.] Cf. Bacon's essay, *Of Seditions and Troubles:* 'The *Matter* of *Seditions* is of two kinds; *Much Poverty*, and *Much Discontentment* . . . And if this *Poverty* and Broken Estate, in the better sort, be joined with a Want and Necessity in the mean People, the danger is imminent and great.' This was not however always the case: as to the insurrection of 1381 Dr. Stubbs thinks it 'clear that physical hardships had little to do with the rising' (C. H. ii. 454 n.; cf. Rogers, Work and Wages, p. 271). Cade's rising, again, in 1450 has been proved by Mr. Durrant Cooper to have been by no means of a very plebeian or disorderly character (quoted by Gairdner, Paston Letters, I. lii.). Gascoigne however, with reference to the causes of this very rising, couples together, as Fortescue does, 'lakke off gode' and 'lakke off justice;' see p. 43: 'Communitas . . . surrexit . . . quia justicia defecit; . . . item, propter penuriam magnam.' Fortescue's description of the intimidation exercised on 'thryfty men' by insurgents is well illustrated by a passage in the 'Arrival of Edward IV,' with reference to the attempt of the bastard Falconbridge in 1471: 'Othar of Kentyshe people that wowld righte fayne have sytten still at home, . . . by force and violence of suche riotows people as were of the sayd bastards company, for feare of deathe, and othar great manasses, and thretanynges, were compellyd to goo with the bastard' (p. 33). And Gregory says of Cade: 'the whyche captayne compellyd alle the gentellys to a rysse whythe hem' (p. 190).

Intimidation.

Hussite wars.

þe reaume of Boeme, &c.] The Hussite wars, 1419–1436, were for a long time the chief political interest in Europe, eclipsing even the Anglo-French war, especially after the death of Henry V. And the state of Bohemia is constantly held up as a warning by the writers of the time. Each writer in turn interprets the lesson according to his own prevailing idea. Thus Gascoigne traces the evil to ecclesiastical abuses: 'Istæ duæ causæ, sc. appropriacio ecclesiarum et indigna promocio in ecclesiis, fuerunt causæ quare per hæreses pessimas et errores ecclesiæ et fides destructæ sunt jam in Praga et in regno Bohemiæ' (p. 20; cf. pp. 5–7: 'per indignos prælatos, per appropriacionem ecclesiarum, et per curatos

Theory of Gascoigne as to their origin.

non residentes in curis suis.' Pecock sees the origin of the mischief in the misuse of the Bible by uneducated enthusiasts: 'therfore ȝe Bible men . . . for experience which ȝe han of the disturblaunce in Beeme . . . rebuke now ȝou silf.' 'God for his merci and pitee,' he exclaims, 'kepe Ynglond, that he come not into lijk daunce' (Repressor, pp. 86–7). While Fortescue here regards the trouble as caused by the depression of the commons and the overgrown power of the nobles. All of these were no doubt causes, though no one of them was the sole cause of the Hussite movement. That movement may be regarded under three main aspects: ecclesiastical, social, and national. Gascoigne and Pecock look at it from the first point of view, Fortescue from the second. The principle of nationality was not then sufficiently recognised to make the importance of the movement under the third head discernible to the men of that generation. The three sides of the movement were however closely connected with one another. Socially it was a reaction against feudalism, and feudalism was a foreign institution, closely connected in its inner idea and external history with the mediæval hierarchical system, so that the movement against it was at once national, democratic, and religious. These ultra-democratic views, however, and the communistic theories, which Fortescue alludes to, obtained mainly among the extreme Hussites or Taborites; the Calixtines being a moderate and aristocratic party, while the followers of Zizka, called after his death 'the orphans,' occupied a position midway between the two. Fortescue is so far right in accentuating the social character of the movement, that it was this which all the vested interests of Europe were so anxious to suppress. Under the guise of religion they attacked a system which threatened their own existence. The Hussite movement may have had a special interest for England, both on account of the connexion of Huss with Wiclif, and of Cardinal Beaufort with the fourth Crusade against the Hussites (1427). The state of Bohemia was alluded to as a warning to England by Archbishop Kemp in his opening address to the Parliament of 1429 (Rot. Parl. iv. 335). For the subject of this note I must refer generally to Palacky, Gesch. v. Böhmen, Band III. Abth. ii. and iii.

Pecock.

Fortescue.

The Hussite movement ecclesiastical, social, and national

These three aspects closely connected.

Communism.

Connexion of the movement with England.

hit is the kyngis . . . office to make is reaume riche.] Cp. Ægidius, *De Regimine*, III. ii. 8: 'Decet ergo reges et principes sic regere civitates et regna ut sibi subjecti habundent rebus

Duty of a king to make his realm rich.

exterioribus'—'þanne kynges and princes shulde rewle citees and regnes so þat here sogettes haue i now of outward thinges' (f. 137 a). Cp. also the eloquent address of the Bishop of Bayeux to Humphrey, Duke of Gloucester, on the state of Normandy: 'Quare summâ ope omni principi enitendum est, ut subjectam multitudinem præservet et foveat; nec minus de utilitate publica quam de privata cogitet: quoniam populi fundamenta sunt ex quibus omnia prominent imperia; nec ulli ambigendum est tam magna fore dominia, quam dives subest populi multitudo' (Bekynton, i. 291). Gregor (p. 85) quotes from Coke the maxim that a king is never rich when his subjects are poor; while Waterhous (p. 166) cites from a speech of James I the saying, 'that king is miserable how rich soever he be that reigns over a poor People.'

ayenst his conciens.] Cf. Chap. iv. pp. 116–7, above; and on the poverty of the French commons and the exemption of the French nobles from taxation, see notes to Chap. iii. pp. 196–7, above.

Condition of the English Commons.

our commons be riche.] On the condition of the various classes of English society below the rank of barons, from the knight to the yeoman, artisan, and villein, see S. C. H. iii. 544–558, 598–607. Mr. Thorold Rogers says (Introduction to Gascoigne, pp. xxxiv. f.): 'There was, the times considered, abundance of wealth in England at the period immediately preceding the outbreak of civil war. The fifteenth century was a period of singularly unbroken agricultural prosperity, of plentiful harvests, of high wages, of accumulated opulence. Land which a century before yielded in rent a return of ten per cent. on the purchase money, now yielded five or less. Farmers were gradually acquiring freehold estates, and becoming yeomen were the progenitors of the small gentry who played so conspicuous a part in English History two centuries later. In the universal passion for acquiring land commons were enclosed, often by usurpation, and men of free estate became the purchasers of copyhold, thus giving stability and a higher position to those estates which the law books still affected to call base or precarious. The tenants of these base fees resisted even the payment of customary rents, and successfully demanding arbitration between themselves and their lords, succeeded in reducing and permanently fixing their liabilities. . . . The record of prices in England, especially those of wheat and barley, gives no indication whatever that war produced scarcity.

During the whole of the fifteenth century, the harvest was a failure in only one year, 1438–9. When the strife was at the hottest, bread and beer were abundant and cheap, for the cost of a labourer's maintenance was from 8*d.* to 9*d.* per week. In the reign of Elizabeth, contracts for the board of the men in her employ were as high as 4*s.* 6*d.* to 5*s.* for the same time.'

In the 'Comodytes of Englond' Fortescue (if it be Fortescue) says: 'the comune peple of thys londe are the beste fedde and also the beste cledde of any natyon, crystyn or hethen' (Works p. 552). The riches and self-sufficiency (*αὐταρκεία*) of England are a frequent theme with the mediæval writers. Thus the author of the 'Dialogus de Scaccario' says— Testimony of mediæval writers.

> Insula nostra suis contenta bonis peregrinis
> Non eget. Hanc igitur merito dixere priores
> Divitiisque sinum, deliciisque larem.'

Higden has a chapter (Lib. i. c. 41) 'De prærogativis insulæ attollendis,' made up of quotations from older authors, and ending with some verses of Henry of Huntingdon, which begin—

> 'Anglia, terra ferax et fertilis angulus orbis,
> . . . . . .
> Est contenta sui fertilitate boni;'

and some of Ailred of Rievaulx, two of which run thus—

> 'Insula prædives, quæ toto non eget orbe,
> Et cujus totus indiget orbis ope.'

This derivation of Anglia from Angulus, which is as old as Bede (Hist. Eccl. i. c. 15, 'illa patria quæ Angulus dicitur,' v. Higden II. vii.), gave a great impulse to this strain of reflection. Archbishop Arundel, at Henry IV's accession, discoursed in Parliament on the theme, that 'cest honorable Roialme d'Engleterre q'est la pluis habundant *Angle de Richesse* parmy tout le monde,' had been ruined by the government of children (Rot. Parl. iii. 415). In a letter to Eric, king of the Scandinavian kingdoms, written in 1439 (the very year of famine mentioned by Mr. Rogers above), Henry VI says that England, though now suffering from the bad effects of a very wet season, is yet in average years (communibus annis) extremely fertile (Rymer, x. 717). One point in which Fortescue contrasts England favourably with the Continent is the number of small landowners in the former; *De Laudibus*, c. 29. Number of small landowners in England.

And his commentator, Waterhous, speaks in the same strain of his own day: 'The Yeoman and Country Corydon is a great Proprietor of Land' (p. 373). 'Only with us are men of the Plough men of Estate' (p. 391). 'Abroad in the Continent, great men, as it were, live alone in the earth' (p. 394). Now the sides of this comparison are exactly reversed.

Taxes on moveable property.

quinsimes and dessimes.] *i. e.* fifteenths and tenths. The first direct tax on moveable property in English history was the Saladin Tithe of 1188. But as the wealth of the country increased, a tax on moveables became one of the most frequent resources. Various proportions were granted from time to time, twentieths, thirtieths, eighteenths, &c. (v. S. C. H. Index, s. v. *Taxes*). But from about 1332 onwards the tenth and fifteenth became the unit of taxation for moveables (ib. ii. 376–8). And from that time the usual grant on moveables was either a tenth and fifteenth, or some multiple or fraction of a tenth and fifteenth, the tenth representing the contribution of the towns, and the fifteenth that of the shires. The reason for this difference has been explained in the notes to Chapter iii. p. 196, above. The last occasion on which I have found this distinction expressly mentioned in the terms of the grant is in 1380, when the Lords and Commons granted to the king 'une Quinszisme et demy par dehors Citees et Burghs, et une Disme et demy par dedeinz mesmes les Citees et Burghs' (Rot. Parl. iii. 75 a). But in subsequent grants it is nearly always mentioned that this tax is to be levied in the manner accustomed, so that the distinction may be presumed to have lasted throughout the middle ages. The 'defence of the reaume' is frequently mentioned in the preamble to parliamentary grants as an object, if not the object, for which the grant is made.

Shires and boroughs taxed in different proportions.

a quinsime and a desime quinqueniale, &c.] In 1337, 1348, 1352, a tenth and fifteenth for three years were granted (S. C. H. ii. 378, 398, 405). In 1355, the subsidy on wools, &c. was granted for six years (ib. 405). But I have not found any grant of 'a quinsime and a desime quinqueniale,' such as Fortescue mentions. There may, however, have been such a grant between 1356 and 1362, as the Rolls of Parliament for those years are lost (ib.) The same holds true of the next grant which Fortescue mentions. In 1340 the lords and knights of the shire granted the ninth sheaf, fleece, and lamb for *two* years (Rot. Parl. ii. 112 b; cf. ib. 450 b). But I know of no occasion on which such a grant was

made for five years. Mr. Rogers, in his examination of mediæval accounts, found 'many more taxes than the Rolls of Parliament grant' (Work and Wages, p. 208). 'The largest sum ever offered by the Commons in one year during the Middle Ages' was in 1453 (ib. 314).

ffor thai haue not so much ffredome, &c.] Cf. St. Thomas, *De Regimine*, i. c. 10: 'Experimento etiam magis apparet, quod reges per justitiam magis adipiscuntur divitias quam per rapinam tyranni. . . . In necessitatibus plura regibus sponte donant quam tyranni diripere possint.' Ægidius Romanus follows him, *De Regimine*, III. ii. 12: 'Veris regibus donatur plus ex amore quam tirannis perveniat ex predatione populi.' 'Verrey kynges ben lordes by loue and hauen more good by loue þan tyrauntes hauen by spoylynge of þe puple' (f. 140 d). In 1401 the Commons declared to Henry IV, 'qe la pluis greindre tresor et richesse du monde, est, a chescun Roi d'avoir le coer de son poeple; Qar par consequence s'il ait le coer, il est verraisemblable q'il auera ceo qe luy bosoigne de leur biens' (Rot. Parl. iii. 456 a). Compare the passage from Burke quoted at the end of the notes to Chapter viii. pp. 253–4, above; and add to it the following from his speech on American Taxation: 'Sir William Temple says, that Holland has loaded itself with ten times the impositions which it revolted from Spain rather than submit to. He says true. Tyranny is a poor provider. It knows neither how to accumulate, nor how to extract.' 'Tyranny a poor provider.'

a ffewe regions be ffore specified.] See Chapter ii. above, and notes.

we se dayly, &c.] Here no doubt Fortescue is speaking partly out of his experience as a judge. Compare More's Utopia, Book I, near the beginning. More similarly attributes the prevalence of thieving to poverty; and traces poverty to various causes:—disbanded soldiers, rack-renting, sheep-farming, luxury, drunkenness, 'ingrossers and forestallers' (= corner-men), defective education, &c.

lakke off gode or lakke off justice.] On the former of these two causes of insurrection, see above, p. 284. As to the latter, cf. 'Understanding and Faith:' 'Art thou nat remembred howe it is writen that lakke of Justice and untrewe dedys maken Reames redy to be chaunged?' (Works, p. 485). Aristotle says: λύονται μάλιστα αἵ τε πολιτεῖαι καὶ αἱ ἀριστοκρατίαι διὰ τὴν ἐν αὐτῇ τῇ πολιτείᾳ τοῦ δικαίου παρέκβασιν (Pol. viii. 7. § 5). On 'lack of justice,' as charac- Insurrections caused by injustice.

teristic of the Lancastrian times, see Introduction, Part I. pp. 19–22, above, and the forcible words of Cade there quoted. In 1450 the Duke of York invited Henry VI 'tendirly to consider the grett grutchyng and romer' that is universaly in this your reame of that justice is nouth dewly ministred' (Paston Letters, i. 153). So in 1460 the Yorkist lords declared that 'alle rightwysnesse and justice ys exyled of the lond' (English Chronicle, p. 86). The same subject is a frequent theme of the opening speeches in Parliament, *e.g.* in 1429, 1431, 1433 al. (Rot. Parl. iv. 335, 367, 419, &c.). Burke (Present Discontents) quotes the following from Sully: 'Pour la populace, ce n'est jamais par envie d'attaquer qu'elle se soulève, mais par impatience de souffrir.' Conversely: 'felicite or peas in every Reame is evermore caused of Justice, as it appereth by probabill persuacions of Philosofers' (speech of Edward IV to the Parliament of 1467–8, Rot. Parl. v. 622 b).

CHAPTER XIII.

Risings in the Pays de Caux.

the commons off the contre off Caux.] The 'pays de Caux' was part of the duchy of Normandy, situated on the north of the Seine. The rising to which Fortescue alludes was probably the one which took place towards the end of 1435, after the Congress of Arras. The signal was given by the capture of Dieppe by the French. 'A ce signal "*le commun peuple*" du pays de Caux se souleva sous la conduite d'un paysan nommé Le Carnier, et vingt mille hommes des bourgades et des villages se joignirent à Rieux sous l'étendard de France. . . . Fécamp, Montivilliers, Lillebonne, Tancarville, Saint-Valeri-en-Caux, Harfleur . . . se donnèrent ou furent pris de vive force; tout le pays de Caux, hors Caudebec et Arques, fut, en peu de jours, affranchi des Anglais.' [Dec. 1435–Jan. 1436.] (Martin, Hist. de France, vi. 341–2; cf. Barante, Ducs de Bourgogne, ed. Gachard, i. 572; Eng. in France, ii. 279, 761). There had been a rising previous to this in the summer of 1434, provoked by the disorders of the English troops (Martin, u. s. pp. 325–6). But from the mention of the number of towns captured, it would seem almost certain that it is to the second rising that Fortescue refers. Hall mentions both (pp. 171–2, 179), but he describes the former in language more appropriate to the later rising. The national character of the

rising, which Hall lays stress upon, deprives it of any applicability to Fortescue's argument. The English recovered the country in the course of 1436 owing to the misconduct of the French troops, who, says Sismondi, had reduced it to the state of a horrible desert (Hist. des Français, xiii. 264). Naturally the district was extremely fertile (Martin, u. s. p. 342). But it suffered severely during the English wars. Basin says: 'Vidimus ipsi . . . agros . . . Caletensium (*i.e.* Caux) . . . prorsus desertos, incultos, squalidos et colonis nudatos, dumetis et rubis oppletos, atque illic in plerisque terris, quæ ad proferendas arbores feraciores exsistunt, arbores in morem densissimarum silvarum excrevisse' (i. 45). In 1422 Henry V appoints a *louvetier* for the Bailliage of Caux, because, owing to the war, wolves have so increased in the district that they even devour men (Rymer, x. 224; cf. ib. 56; ix. 755, 862). In 1440 the King's Council confessed that 'the Kynges cuntre there, namely the Duchie of Normandie . . . is nowe broughte to that myschief and extreme miserye, that unneth thoo that ben left therinne may pourly lyve' (Engl. in France, ii. 456).

corage wich no Ffrenchman hath like vnto a Englysh man.] This was a belief which the experience of Crecy, Poitiers, Agincourt, &c., had not unreasonably produced, and which even the downfall of the English power in France had not been able to impair.

ther bith . . . mo men hanged in Englande, &c.] Cf. More's protest against the severity of the Criminal Law of England, quoted in the notes to the last Chapter. He says that twenty men were often hanged on one gallows. The evil against which More protested went on increasing for three hundred years. Not till 1820 did shoplifting to the value of five shillings cease to be punishable with death (see Martineau, History of the Peace, i. 98–104, 232, 352). Here again we may trace the influence of Fortescue's judicial experience, and, in the comparison of England with France and Scotland, the fruit of his observations in exile. It is however a Scotch motto which says, 'Thou shalt want ere I want,' which is the principle on which Fortescue supposes the English robber to act. In the *De Laudibus*, c. 46, Fortescue contrasts the English and the Civil Law in regard to the punishment of theft, and seems rather to exult in the greater severity of the English law; and his successor, Lord Chief Justice Ellenborough, was one of the chief opponents of Sir Samuel Romilly in his efforts to secure some mitigation of that severity.

Frequency of capital punishment in England.

CHAPTER XIV.

a generall resumpcion, &c.] On this, see notes to Chapter xi. pp. 279–281, above.

be þe advise off his counsell mey rewarde, &c.] See below, notes to Chaps. xvii, xx.

or not so grete astate in the same.] *e.g.* they might have been given a life-estate instead of an estate in fee-simple; or an estate for term of years instead of for term of life, &c.

as is be ffore shewid.] Vid. Chapter xi. ad finem, p. 137, above.

a worshipfull and a notable counsell.] On all this, v. Appendix B. § 1.

such givinge were no vertu but . . . prodigalite.] This is very like one of the *Flores* of St. Bernard, 'Dispensatio sine necessitate et utilitate non fidelis dispensatio sed crudelis dissipatio est.' (Migne, Bibl. Lat. tom. 183, col. 1199).

brocage.] On this, see notes to Chapter xvii. below.

Complaints against the royal councillors.

as thai were woned to haue.] Complaints against the royal councillors for 'miscounseling' the King, and especially for mismanagement and misappropriation of the property and revenues of the crown, are among the most constantly recurring subjects in the documents and histories of the fifteenth century. In almost every rising this complaint is put forward among the articles of the insurgents. One of the objects of the Percies in 1403 was: 'ut . . . possent . . . corrigere publicas gubernationes, et constituere sapientes consiliarios ad commodum regis et regni. Scripserunt insuper quod census et tallagia . . . non sunt conversa in usus debitos, sed devorata nimis inutiliter, atque consumpta' (Ann. Henr. pp. 361–2, in S. C. H. iii. 40; cp. the very similar article of 1405, Gascoigne, pp. 230–1). This formed the subject of several of the charges against Suffolk in 1450 (Rot. Parl. v. 179 ff.). Cade's proclamation of the same year is one long indictment of those about the king, who 'dayly enforme hym that good is evyll and evyll is good;' and, in regard to this special point, 'they sey that it were gret reproffe to the kynge to take ageyne that he hath gevyn, so that they woll not sufere hym to have his owne good, ne londe, ne forfeture, ne eny othar good but they aske it from hym, or ells they take bribes of othar to gett it for them' (Three Chronicles, p. 95; cf. ib. 98). One of the demands of the Yorkist lords in

Their misappropriation of the King's revenues.

1460 was 'that it wolle please his sayde good grace to lyve upponne his owne lyuelode, . . . and nat to suffre the destroyers of the sayde londe and of his trewe sugettes to lyve theroponne, (English Chronicle, p. 86; cf. Warkworth, pp. 11–2). Gascoigne heartily endorses these complaints (ed. Rogers, pp. 158, 220–1). The author of a political song, written about 1450, says:

'So pore a king was never seene,
Nor richere lordes all bydene.'

And again:

'Ffor ye have made the kyng so pore
That now he beggeth fro dore to dore.'
(Political Songs, ii. 229 f.)

And Whethamstede (i. 249) laments the indiscriminate liberality of the king. Fortescue, in Appendix B. §§ 1, 2, not only admits, as here, that the people have had cause of 'grudging' against the king and those about him, but says that they 'have oftyn tymes slayne' the latter 'for the myscounceling of theire soueraigne lorde;' where he is no doubt thinking of the fate of Bishops Moleyns and Ayscough; Suffolk, and Lord Say and Sele. The murder of Archbishop Sudbury, in 1381, is an earlier case in point. So in 1469 the Commons, under Robin of Redesdale, complain of the Wydvilles 'and other of thayre myschevous assent and oppinion, whiche have advised and causid oure seid sovereigne lord to geve of the seyd lyvelode and possessions to them above their disertis and degrees' (Warkworth, p. 48). And in 1475, after Edward's inglorious expedition to France, the Croyland Continuator says that 'tantus crevisset numerus populorum conquerentium super male dispensatis regni divitiis, . . . ut nesciretur quorum consiliariorum capita incolumia remanerent' (p. 559). It is therefore not without reason that Fortescue (u. s.) says, that the abatement of these evils by a properly constituted council would be a great security to the councillors themselves.

Councillors put to death.

nor off murmor ageynes the kynges person, &c.] Fortescue wishes that the council should act as a shield to the throne, much in the same way as the Cabinet, under the doctrine of ministerial responsibility does in modern times. This lesson had perhaps been impressed upon him by the events of Henry VI's reign. See Introduction, Part I. pp. 9, 34, above.

and the wise man saith.] Prov. xi. 14: 'Ubi non est gubernator, populus corruet: salus autem, ubi multa consilia.'

such a contenuall counsell.] 'The king's permanent, or what would now be termed, the Privy Council, was called in the records of Parliament, his "Continual or Permanent Council," in contradistinction to the "Great Councils," which met only in consequence of special writs of summons; whereas the "Continual Council" sat daily for the dispatch of business' (P. P. C., I. iii; cf. Dicey, Privy Council, p. 5).

CHAPTER XV.

How the kynges counsell mey be chosen, &c.] On all this compare Appendix B. §§ 2, 3, which is often verbally identical with the present chapter.

The Privy Council.

The kyngis counsell was wonned to be chosen, &c.] For the earlier history of the council, which is an extremely obscure subject, see S. C. H. ii. 255–266; and Dicey, Essay on the Privy Council, pp. 1–13. And for the history of the council during the Lancastrian and Yorkist period, see S. C. H. iii. 247–256; and Dicey, u.s. pp. 14 ff. In the present note I propose to treat consecutively, in the light of the illustrations furnished by contemporary documents, the chief points raised by Fortescue in connexion with his scheme for re-organizing the privy council; leaving the minor points to be dealt with in the separate notes which follow. I shall take the points as far as possible in the order in which they are mentioned by Fortescue.

Its composition.

i. *Composition of the Council.* 'The kyngis counsell,' says Fortescue, 'was wonned to be chosen off grete princes and off the gretteste lordes off þe lande both spirituelles and temporellis, and also off oþer men that were in grete auctorite and offices.' By the 'grete princes' Fortescue means, no doubt, the immediate members of the royal family, the king's uncles under Richard II and Henry VI, the king's sons under Henry IV, the king's brothers under Henry V and Edward IV. By the 'men in grete auctorite and offices' are meant the great officers, of whom the chancellor, the treasurer, the privy seal, the chamberlain, and the steward of the household were *ex officio* members of the council. These, with the great lords spiritual and temporal, were the elements out of which the council was composed during most of the Lancastrian

Predominance of the great lords.

period. In the early years of Henry IV we find several commoners admitted to the council. In 5 and 6 Henry IV as many as seven commoners are found in the lists of councillors (Rot. Parl. iii. 530; P. P. C. i. 237). At the beginning of Henry VI's reign the number sinks to four (P. P. C. iii. 16, 148). After that date I have not found more than one, or at the most two unofficial commoners in the lists of the council. Mr. Dicey (u.s. p. 15) was inclined to attribute this difference to the less vigorous administration of Henry VI, which allowed the great lords to monopolize the government. I am inclined rather to trace it to the gradual cessation of that Parliamentary pressure on the composition of the council, which is so marked a feature of the reign of Henry IV. Never were Parliaments more determined than under Henry IV, and they, like the baronial Parliaments of Henry III, were anxious to force representatives of their own upon the king as his advisers. Arnold Savage, the most uncompromising Speaker in his addresses to the Crown that the Commons probably ever had, found his way in this manner into the royal council. Anyhow, it will be seen how great is the change contemplated by Fortescue, when he urges the formation of an official council, composed almost entirely of persons chosen on the sole ground of their capacity for business: 'xij spirituell men and xij temporell men off þe wysest and best disposed men þat can be ffounde.' For it is obvious that the four spiritual and four temporal lords whom Fortescue, chiefly it would seem for appearance sake, adds to the council would have little influence as compared with the twenty-four; especially as the former hold office only for a year, whereas the latter are to 'be alway counsellers, but yff þer be any defaute ffounde in hem, or þat hit lyste the kynge be the advise off þe more parte off hem chaunge any off hem.' But great as the change may be which Fortescue proposes, it is the change which as a matter of history came about in the composition and character of the council; and in this as in other points Fortescue forms the transition from the old to the modern system. Of the character of the council under Edward IV we know, owing to the absence of documents, hardly anything; and therefore we cannot say how far he acted on Fortescue's advice. The introduction of the Wydvilles and their adherents into the council (S. C. H. iii. 250) was but a very imperfect compliance; since instead of destroying, as Fortescue wished, the influence of aristocratic factions on the government, he merely created new factions

Commoners.

Official council recommended by Fortescue.

His proposal anticipates the actual development of the council.

in place of the old ones; and on the ruins of the rivalry of the Roses arose the rivalry of the old and new nobility. It is when we come to Tudor times that we see Fortescue's system in full working order, though not of course in the exact mathematical detail which he lays down. Of the forty councillors appointed in 1553 twenty-two are commoners. 'England was governed, not through peers of ancient lineage, but through the Cromwells, the Sadlers, the Petres, and the Cecils, who constitute the glory of the Tudors' rule. The promotion of such men was a national blessing; but it increased immensely the power of the crown, by undermining the independence of the council' (Dicey, p. 42; cf. P. P. C., VII. iii. iv). The presence of 'base blood' about the king or queen was a frequent theme of complaint in Tudor times. The increase of the power of the Crown was precisely the result which Fortescue most probably intended. The size of the council proposed by Fortescue seems to us unnecessarily large, and we should be inclined to prefer the alternative council suggested by him on economical grounds, consisting only of twenty members. But the council of Edward VI was, as we have seen, even larger. During the Lancastrian period the numbers of the council vary from nearly forty (P. P. C. vi. 292; cf. ib. 167, 169, 171) to nine in 1410 (Rot. Parl. iii. 632, 634 b), when, owing to the embarrassments of the government, it was extremely difficult to get any one to serve. The average number was from fifteen to twenty. But it was probably only on important occasions, such as the incapacity of Henry VI, that the council met in its fullest form. The fact that 'six or at the least four' is constantly fixed as a quorum in the regulations of the council, shows that the average attendance was not expected to be very large; a view which is entirely confirmed by the records of attendances in the Proceedings of the Privy Council; though in 1422 it was ordered that 'in alle grete materes þat schal passe by conseil, alle be present or ellis the more partie' (P. P. C. iii. 18). The work of the council was still further expedited by appointing committees for certain purposes (*e.g.* ib. i. 127; v. 15 al.), a practice which was reduced to a system in Tudor times (Dicey, pp. 39 f.). The attendance of the great officers is allowed, but evidently not encouraged by Fortescue. The judges, barons of the exchequer, master of the rolls, and others are only to attend when specially requested 'for materes off gret deficulte,' in the same way as the Triers of Petitions in

Corresponds with Tudor practice.

Increase of the power of the Crown.

Number of councillors.

Committees.

Parliament are allowed to summon the great officers and sergeants of the king if they require their assistance (S. C. H. iii. 452, and Rot. Parl. passim). In the actual records of the privy council it is a constantly recurring regulation that the judges are to be consulted in all matters touching the king's prerogatives or freeholds (P. P. C. iii. 151, 217; iv. 63). Many instances of the presence of the judges are recorded in the Proceedings of the Council; Fortescue himself being present on several occasions (see Introduction, Part II. pp. 46–7, 52, above).

Attendance of Judges.

ii. *Appointment and removal of Councillors.* The appointment of councillors, like the choice of ministers, is an undoubted prerogative of the Crown. But during the early part of the Lancastrian period this right was exercised under considerable limitations. In 1404, 1406, and 1410 Henry IV had to yield to the request that the council might be nominated in Parliament, which implied the nomination of a council acceptable to Parliament. Under the popular rule of Henry V no question of this kind could arise. But during the minority of Henry VI the council was appointed not only in, but by Parliament. So that from 1404 to 1437 the council may be regarded as occupying very much the position of a modern cabinet or ministry: *i.e.* as a committee of that party which commanded the confidence of Parliament and the nation. In 1406 and 1411 Parliament passed what we should call votes of confidence in the ministry (Rot. Parl. iii. 568 a, 649 a). And indications are not wanting that there was a tendency to give to the council something of the unity and joint responsibility of a modern cabinet. In 1406 the king agreed that if any of the council were impeded in the performance of the king's service (*profit*), or in the execution of the laws, they might resign (*en departir*), without incurring the king's indignation. Still more characteristic is the regulation made in the same Parliament that no councillor should excuse himself, or accuse any of his colleagues in regard to any decision come to in the council (ib. 572 b, 587 b); for without mutual loyalty joint responsibility cannot exist. After 1437 Henry VI resumed the right of appointing absolutely, perhaps, as Dr. Stubbs has suggested, because after the cessation of the functions of the council as a government of regency, the Parliament forgot or did not care to control the composition of the council in its more normal capacity (C. H. iii. 249). The factious policy of Margaret of Anjou finally destroyed any representative

Appointment of councillors vested in the Crown.

Control exercised by Parliament.

Analogy of modern cabinet government.

Cessation of parliamentary control.

character which the council might previously have had. Men were maintained in office whom the nation abhorred, others were excluded whom the nation desired, simply because it was the pleasure of the court. Further attempts to secure the responsibility of councillors are to be seen in the regulation that the clerk of the council is to keep an exact record of attendances 'to see what, howe, and by whom enything passethe' (P. P. C. iii. 18); and in the still more stringent order, thrice repeated, that every 'bill' passed in the council is to be signed by those councillors who have assented to it (P. P. C. iii. 150, 216; iv. 62; many of these 'bills' signed by councillors may be seen in the P. P. C.); provisions which remind us of the unworkable clause in the Act of Settlement that 'all resolutions taken [in the privy council] shall be signed by such of the privy council as shall advise and consent to the same' (Hallam, C. H. iii. 181). The advice given by the judges under the circumstances mentioned above is also to be carefully recorded. If a majority cannot be obtained for any opinion, the various opinions put forward and the names of the persons who held them are to be registered (P. P. C. iii. 149. For actual instances of this, cf. ib. i. 126, 144; v. 76–7, 223, 274). But the most striking instance in which the council showed their sense of their accountability to Parliament was in 1389, when they refused to agree to a proposal of Richard II, lest they should be charged in Parliament with having unnecessarily burdened the revenue (P. P. C. i. 12c). Fortescue gives no hint of this parliamentary control over the composition and measures of the council. Very likely he considered it undesirable. But he limits very materially the king's power of dismissing councillors, by requiring that, except for some definite offence, councillors shall only be removed with the consent of a majority of their colleagues. For this too there is historical authority. In 1426 and in 1430 (during the minority of Henry VI) it was prescribed, 'þat þe correction punicion or remoevyng of any consailler or greet officer of þe kynges procede of þassent and advis of the more part of alle þoo þat beene appoyntede of þe kinges counsail' (P. P. C. iii. 216; iv. 62. Cf. the complaint of Lord Cromwell in 1432 that he had been removed contrary to these regulations, and for no fault on his part, Rot. Parl. iv. 392). As to their tenure of office, the appointment of councillors under Richard II and Henry IV was annual; later, subject of course to resignation or dismissal, it was for life (Dicey, p. 15).

Responsibility of councillors.

Removal of councillors.

iii. *The oath of the Councillors.* The councillors, says Fortescue, are to 'be sworne to counsell the kynge aftir a ffourme to be devysed ffor þer owthe, and in especiall þat thai shall take no fee nor clothynge nor no rewardes off any man except only off þe kynge.' There are among the records of the Privy Council several entries of the swearing in of councillors. And the allusions which these entries contain to the 'usual form' of the oath show that that form was perfectly well known. For example, on February 28th, 1424, 'Johannes dominus de Scroope juratus fuit ad sancta evangelia in forma consueta de fideliter consulendo pro commodo Regis et regni, et assumptus fuit in consilium Regis' (P. P. C. iii. 147). In 1437, 'The keper of þe prive seel, etc., have sworene and maade feythe unto þe K' to counsaille him wel and trewly, . . . to kepe þe K' consailx secree, and shortly þei shal consail and doo alle þat goode consaillers sholde' (ib. v. 72). This is the nearest approach that I have found to a record of the actual form of oath on an historical occasion. But two forms of oath occur (P. P. C. iii. 176, 188): the former was drawn up in the council in 1425, to be taken by the council, while the latter was passed in the Parliament of 1426, and was taken by all members of the upper house. The chief points in the former, which is too long to quote at length, are: that the councillors shall give impartial counsel; that they shall observe strict secrecy; take no gifts intended to influence their conduct as councillors; and generally assist to their utmost 'during the Kynges tendre eage,' which shows that this formula was drawn up with special reference to the minority of Henry VI. Sometimes the councillors were sworn to observe the special articles drawn up from time to time for their regulation, *e.g.* Rot. Parl. iii. 585 b. For earlier forms of the councillor's oath, see S. C. H. ii. 258, and the references there given. The special point insisted on by Fortescue is illustrated by a regulation of the year 1426, 'þat no man be of þe kinges counsail but suche as be barely of his counsail, and entendyng upone noon oþers counsail in especiale' (P. P. C. iii. 219), and by a minute of the year 1437, 'þat noon of hem take anny fee of any oþer persone þen of þe kyng' (ib. vi. 315). Oath taken by councillors.

iv. *The President of the Council.* The councillors, says Fortescue, must 'haue an hed or a cheeff to rule þe counsell, on off þe said xxiiij^ti^, and chosen be the kynge, havynge is office at the kynges pleasur, wich mey thanne be callid *Capitalis consiliarius*.' It is President of the Council.

characteristic of Fortescue's point of view, that the President of the Council is to be taken from among the permanent official members of the council, and not from among the annual aristocratic members. But though this point is new, the institution of a chief councillor is old. Of the ancient Curia Regis, out of which the council, like the Law Courts, arose by a gradual differentiation and specialization of functions, the king himself was the natural President. In his absence his place was taken by the Justiciar (Capitalis Justiciarius). When the Justiciar lost his political character, and became merely the head of the Court of King's Bench, much of his importance was inherited by the chancellor; and this is perhaps the historical basis of Fortescue's suggestion that 'þe Chaunceler when he is present mey be presydent and haue þe suppreme rule off all þe counsell.' This suggestion does not occur in the almost identical scheme for the constitution of the council drawn up by Fortescue with reference to the Lancastrian restoration of 1470 (Appendix B). Otherwise we might perhaps have suspected that a (no wise blameable) regard to his own dignity had dictated the proposal. For, as we know, Fortescue was appointed chancellor to Henry VI at the time of his expulsion from the throne; and it is in this character that he introduces himself in his dialogue on the Laws of England. Very frequently however some definite person was appointed chief councillor. Under Henry III, William Bishop-elect of Valence, 'factus est consiliarius regis principalis;' under Edward II the Earl of Lancaster was made 'de consilio regis capitalis,' 'principalis consiliarius regis;' Archbishop Stratford was 'consiliarius principalis' to Edward III, and the same office was held later in that reign by William of Wykeham, with the title of 'Capitalis Secreti Consilii ac Gubernatoris Magni Consilii' (S. C. H. ii. 257, 339, 402; P. P. C., I. iv). Henry V, as Prince of Wales, and after him his brother Thomas, held the chief place in their father's council, though I have not found any special title assigned to them (S. C. H. iii. 65, 68). 'Principalis Consiliarius' was one of the titles borne by Bedford, and in his absence by Gloucester during the minority of Henry VI, and was continued to them after the coronation of the king had put an end to the title of 'Protector et Defensor Regni' which they had previously borne in conjunction with it. These titles are also those given to York during both his Protectorates in 1454 and 1455 (Rot. Parl. v. 243 b, 288 a). During his

exile Fortescue himself held the post of chief councillor (Introduction, Part II. p. 57 *note*, above)[1]. When the king was present in council the words *in presencia Regis* are added at the head of the minutes (*e.g.* P. P. C. v. 6–11, 273). But that this was not the rule is shown by the various regulations made with a view to securing regular channels of communication between the king and the council, and the correlative and even more important measures for preventing the king from acting on advice coming through other than the regular channels. Under Richard II it was prayed that the king would give audience to his council whenever they might request it, and that the chamberlain, steward of the household, and the keeper of the Privy Seal might be 'reporters' between the king and council (P. P. C. i. 85). On Henry IV's accession it was resolved that it was expedient that a 'convenable person' should be appointed to report to the king the advice of his council, and this not only for the advantage of the king, but as a security to honest councillors (ib. 110). In 1406 it was ordered that those councillors who were continually about the king (in virtue of their offices) should act as intermediaries (Rot. Parl. iii. 585 b). In Cal. Rot. Pat. p. 296 a (32 Hen. VI) there is a notice of a regulation concerning the councillors and their access to the king; while numerous are the requests that the king would give his full confidence (*creance*) to his council, govern wholly by their advice, and not act on any suggestion or information coming from any other source without first referring it to them (P. P. C. i. 84; Rot. Parl. iii. 585–6). The 'influence behind the throne' was for centuries one of the great obstacles to constitutional government. And this point comes out more clearly in Fortescue's paper of 1470 than in the present work. 'And thanne,' he says, 'shall the king not be counseled by men of his Chambre, of his housholde, nor other

The king not usually present.

Communication between the king and the council.

'Influence behind the throne.'

[1] In a more general sense the Archbishop of Canterbury was in old days constitutionally the first adviser of the Crown (cf. S. C. H. i. 359; Select Charters, pp. 92, 102). That this somewhat vague right was still in some sort recognised is shown by Gloucester's manifesto of 1440: 'Of right the archebisshop of Caunterbury shulde be 3oure chief counsaillier, the whiche is also estranged and sette aside.' English in France, ii. 442. 'In 10 Ric. II. the Archbishop of Canterbury delivered to Parliament a solemn protest claiming for himself and his successors the right of being present at all the King's Councils, whether General, or Special, or Secret (P. P. C., I. iii, from Rot. Parl. iii. 223 b). Compare Rot. Parl. iii. 417 b: 'Archiepiscopo Cantuariensi ... competit primam vocem habere inter ceteros Prelatos et Proceres Regni.'

which can not counsele hym' (Appendix B. § 2). While in his tract on 'Good Counseill' (Appendix A) he traces all the misfortunes of England to the fact that 'our kinges have bene reuled by private counselloures, such as have offered their service and counseile and were not chosen therto.'

Wages of councillors.

v. *Wages of Councillors.* Fortescue evidently expects great objections to be made to his scheme on the score of expense. He is afraid lest the 'wages off the said xxiiij counsellers seme a newe and a grete charge to þe kynge.' But he replies very justly that the expense will be smæll compared with that of the old aristocratic council which 'was nothynge so behouefull' as the new council will be. For the aristocratic members of the new council are to be as much reduced in salary, as in influence and importance. The following table exhibits the scale of annual payments made to councillors according to their hereditary or official rank during the present period; together with the fines per diem imposed on them for absence from the council during term-time without reasonable cause.

Scale of payment.

Councillors.	Wages per Annum.	Fines per Diem.	Authorities.
An Archbishop ...	£200	£1	P. P. C. iii. 155–6, 266.
A Duke	£200	£1	P. P. C. iv. 101–3.
The Chancellor...	£200	£1	P. P. C. iii. 212–3.
Henry Beaufort...	£200	£1	P. P. C. iii. 155–6.
Other Bishops ...	200 marks	1 mark	P. P. C. iii. 155–6.
An Earl	200 marks	1 mark	P. P. C. iii. 155–6.
The Treasurer ...	200 marks	1 mark	P. P. C. iii. 212–3; iv. 187.
A Baron	£100	10*s.*	P. P. C. iii. 155–6.
A Banneret	£100	10*s.*	P. P. C. iii. 222, 266.
An Esquire	£40	4*s.*	P. P. C. iii. 155–6.

The higher scale of payment made to Henry Beaufort, as compared with other bishops, is probably due to his connexion with the royal family. The authorities here quoted range over a period of ten years, from 1424 to 1434. In several of these records it is stated that this scale of payment dates from the reigns of Richard II and Henry IV (cf. *e.g.* iii. 155; iv. 262). In 1437 salaries are granted to councillors for life; and in another minute of the same year it is expressly stated that 'in cas þat anny of þe seide lordes or conseillers falle to suche unweldenesse or impotence þat he shal not mowe entende unto þe kynges saide Counseil, yit neverþelees þe

Kyng wol þat he shal have and rejoise þe seide fee for terme of his lyf' (ib. v. 72; vi. 315). Considering the relative value of money, these salaries are certainly liberal. But the expensiveness of the King's Council comes out much more clearly when we consider the special salaries granted to councillors like Bedford, Gloucester, and Beaufort, under Henry VI. Thus Bedford, or Gloucester, as the case might be, was to receive 8000 marks a year as Protector and chief councillor (P. P. C. iii. 26, 197; Rymer, x. 268). In 1426, during Bedford's presence in England, Gloucester was allowed 3000 marks as chief councillor next after his brother (P. P. C. iii. 210, 228). In 1429 it was agreed that he should receive 2000 marks as councillor, and 4000 marks when Lieutenant of the Kingdom during Henry VI's absence (ib. iv. 12). But in 1431 he succeeded in getting the council to raise these sums to 5000 and 6000 marks respectively (ib. 104–6). In 1434 Bedford and Gloucester agreed to accept salaries of £1000 (ib. 218 ff., 185). And certain other councillors agreed to give their attendance during term time gratis (Rot. Parl. iv. 446 b). But in 1437 we find Gloucester receiving his old salary of 2000 marks (P. P. C. vi. 314). In addition to the cost of the English council, there was, during a considerable portion of the period, the further expense of the council of the English Government in France, the scale of payment for which seems to have been considerably higher than for the English council (cf. *e.g.* P. P. C. iv. 29, 34, 36, 78, 82; Rymer, x. 472).

Special allowances.

English council in France.

vi. *Times of meeting of the Council, &c.* I do not propose to enter upon the very difficult legal subject of the jurisdiction of the council, as Fortescue does not mention it. He may very possibly have shared the jealousy towards it which prevailed among the common lawyers. But the character of the council, as in some sense a court of law, so far affected its proceedings, that, like other law courts, it only sat during term time, except in special emergencies. The phrase 'in pleno termino curiis Regis sedentibus' occurs in connexion with the meetings of the council (*e.g.* P.P.C. iii. 156). The records of the council's proceedings are dated like law reports, 'de termino Pasche,' &c. (ib. 53). In 1426 it was specially ordered, 'þat out of terme tyme no thing be sped in þe counsail but suche thing as for þe goode of þe kyng and of his lande askethe necessaire and hastye spede and may not goodely be abiden unto þe terme tyme' (ib. 216); and we find business expressly deferred because 'the lordes of the kynges blode and

Times of meeting.

Analogies of the law-terms.

counsail . . . alle the tyme of þe last hervest sesone have ben and as yet bethe in þeire contrees at þeire leisier and desportes, as þe . . . usage of þis lande . . . is' (ib. vi. 338). It was expected that the councillors should attend regularly during term time, unless they had a reasonable ground for absenting themselves, and, as we have seen, they were liable to be fined for non-attendance. But special summonses were also issued when the business to be transacted was exceptionally weighty. Both these points, the regular attendance and the special summons, are illustrated by the following missive of the year 1458: 'Reverent fader in God, How be it . . . alle the lordes and othir persones suche as be of owre Counsail owen in the terme tyme to geve attendaunce to the same, yit for suche matiers as concerne specially . . . the welfare of this owre lande and subgittes, we write unto you that be of our Counsail . . . praying and also charging you that withoute any faille ye wol be atte our paleys of Westminster the xj day of Octobre next comying &c.' (ib. vi. 297; cf. ib. 175; i. 242). Fortescue also assumes that the council will meet every day, for he says: 'trewly such a contenuall counsell mey wel be callid *multa consilia* ffor it is ofte and euere day counsellith' (Chap. xiv. ad finem). The question of the hours at which the council should sit, the length of their vacation, &c., are among the details which Fortescue leaves to 'be conseyued be layser.' But even on these points some information is to be found. Thus, under Richard II, the council is ordered to meet between eight and nine a.m., at the latest (P. P. C. i. 18[a]). Various rules were from time to time made with a view to expediting business, which need not be detailed here. Absolute freedom of debate was enjoined, 'alway due reverence kept to every estat and persone' (ib. iii. 215; iv. 60). But it is likely enough that Fortescue's complaint is well founded, that no 'lower man . . . durste say ayen the openyon off any off the grete lordis.' To preserve the necessary secrecy, a point on which Fortescue also lays great stress, none but sworn councillors are to be present, unless specially summoned (ib.). The provisions that Lords of the Council are not to harbour or maintain evil-doers, accept lands of doubtful title, &c., illustrate the disorder of the time rather than the procedure of the council, and are dealt with elsewhere. (Introduction, Part I. pp. 27–8, above). As to the council's place of meeting, the most usual was 'the Sterred Chambre at Westminster.' But it met in other places, both in London and elsewhere, according to circumstances.

Special summons.

Freedom of debate.

Secrecy.

Place of meeting.

In 20 Edward IV we find the council 'in attendance for the king's advantage at the Cardinal's hat without Newgate,' apparently a tavern (Issues of the Exchequer, p. 499). It is one of Gloucester's charges against Beaufort that he 'takyth upon hym youre estate royal in cleping divers tymes youre counsaille to his owen hous' (English in France, ii. 449). Gloucester had however done the same (cf. P. P. C. iii. 65). But perhaps, as Protector, he had more right to do so.

vii. *Subjects of Deliberation.* Fortescue gives a long list of various subjects on which he would have the council 'commune.' Some of these will be illustrated in the separate notes which follow. But he divides the general sphere of the council's deliberations under two heads, viz. (1) 'materis of defeculte that fallen to the kynge;' and (2) 'materes off þe pollyce off þe reaume.' In more modern language we might say—questions of administration, and questions of general policy. And this describes well enough the wide extent of ground covered by the council's deliberations. Like those of a modern cabinet, they ranged over the whole field of government. The proofs of this assertion must be sought in the proceedings of the council; but Dr. Pauli is certainly right when he says that in those proceedings may be seen better than anywhere else the way in which the Lancastrian kings ruled (Gesch. v. Engl. v. 705). An interesting illustration of the deliberations of the council may be found in P. P. C. i. 319 f., where we have preserved an agenda paper of the council, on the back of which are endorsed the decisions actually come to on some of the points. Mr. Dicey classifies the functions of the council under certain heads, of which the three most important are, (1) finance; (2) dealings with aliens and with trade; (3) preservation of the peace; which last is closely connected with the jurisdiction of the council as a court of law. In relation to the second point, it should be noted how many of the specific subjects of deliberation mentioned by Fortescue are questions connected with trade. Here, again, the authorities are far too numerous for citation, and may be found in every volume of the council's proceedings. With regard to the first point, we have already seen in the notes to Chap. vi. p. 210, above, how the estimates of revenue and expenditure were prepared in the council (cf. also P. P. C. i. 85). Another very important point mentioned by Fortescue, in which the council resembles a modern cabinet, is the way in which it acted in preparing measures for the consideration of Parliament;

Subjects of deliberation.

Trade.

Finance.

Probouleutic functions of the council.

'wher through,' says Fortescue, 'þe parlementes shall mowe do more gode in a moneth to þe mendynge off the lawe, then thai shall mowe do in a yere yff þe amendynge þer off be not debatyd and be such counsell ryped to thair handes.' In this he is certainly right. The Parliaments of England have always been quick enough to discover grievances; but they have often been no less helpless in devising effectual remedies, unless led by men more specially trained in the work of government. The share of the council in grants of lands and offices will be dealt with in the notes to Chapters xvii–xx. Then, as now, the council often acted under special powers conferred upon it by Parliament, in regard *e.g.* to the answering of petitions which were not dealt with in Parliament, to the relaxation of certain statutes, to matters of trade and finance, &c. (cf. Rot. Parl. iii. 457 b, 497 a, 506 b; iv. 118 a, 174 a, 506 b, &c.; S. C. H. iii. 253–4). Sometimes they were directed to take the advice of the judges (cf. *e.g.* Rot. Parl. iii. 505 b; iv. 506 b; v. 7 b, 9 a, 105, &c.). Sometimes, if the questions at issue were too serious to be decided by the council on their own responsibility, a great council was summoned at their request, which either settled the matter, or in turn recommended the summoning of a Parliament (cf. P. P. C. i. 179; iii. 332; iv. 67; vi. 185). These councils consisted of the great lords spiritual and temporal, the judges, privy councillors, &c., with whom were frequently associated 'certain notable knights and esquires,' summoned by name from each county, so that these councils resembled almost Parliaments of nominees, or, to borrow a term from French constitutional history which is fairly suggested by the phrase quoted above, they were 'assemblies of notables.' Thus the education and coronation of the king, the ordinances for the household of 1454, &c., were discussed in great councils (cf. P. P. C. iii. 271, 297; vi. 220). Curiously enough, too, those financial functions which we have attributed to, and seen exercised by, the Privy Council, were in 1437 expressly claimed for the great council: 'þe kynges progenitoures and predecessoures hade of lawdable coustumes and usages at þe begynnyng of þe yer to purveie by þassent of his greet counsail for alle necessaires and charges longyng unto him and to his lordship that were lykly to falle and sue all þe yer after' (P. P. C. v. 65). 'It is probable,' says Dr. Stubbs, 'that the theory which gives to all the peers of the realm the right of approaching the king with advice was thus reduced to practice' (S. C. H. iii. 255;

Statutory powers conferred on the council.

Great councils.

cf. ib. 498; ii. 347, 479). It is curious that Fortescue says nothing of these great councils, though they are a great feature of Lancastrian rule. Perhaps he disliked them as giving too much influence to the nobility. He admits that all the peers are 'consiliarii nati' of the Crown; but it is rather to enforce the view that the Crown has the right to ask their advice whenever it pleases, than the converse doctrine that they have the right of tendering it whenever they please. We hear little of great councils under Edward IV; they reappear, however, under Henry VII, in connexion with which may be read Mr. Spedding's note in the Appendix to Bacon's History of Henry VII. In P. P. C. i. 155 ff., vi. 340 ff., we have lists of the knights who were to be summoned from each county to a great council. It is interesting to find that one of the knights summoned for Buckinghamshire on the latter occasion was John Hampden, of Hampden.

Not mentioned by Fortescue.

thai were so occupied with thair owne maters, &c.] Similar complaints were sometimes made of the Parliaments. In opening the Parliament of 1401 Thirning, Chief Justice of the Common Pleas, complained 'coment devaunt ces heures pluseurs des Seigneurs et Communes venus par Sommons au Parlement ont este pluis entendantz pur leur singulers et especialx besoignes que pur la commune profit et aide du Roialme.' In 1402 similar complaints were made by the Chancellor in his opening speech (Rot. Parl. iii. 454 b, 485 b). It was perhaps to check this evil that it was ordered in 1426 and 1430 that if 'eny matere to be spede in þe counsail' concerned any of the councillors 'he whom the saide matere touchethe be not present whiles þat þe saide matiere . . . is in comunyng' (P. P. C. iii. 214; iv. 60). In 1406 Lord Lovel was excused from serving on the council because he had certain pleas pending in the king's courts 'par quoy il ne pourroit honnestement occupier celle charge' (Rot. Parl. iii. 573 a). The following are perhaps instances of lords of the council using their position as councillors to obtain privileges, &c. for persons in whom they were interested (Feb. 26, 1443): 'At þinstance of my Lorde þe Bisshope of Norwiche the Kyng graunted to William Chartesey his letres patentes of exempcion *quod non ponatur in assisis*,' etc. (March 30, 1443): 'At þinstance of my Lorde of Somerset and Maistre Adam Moleyns þe Kynge granted to Th. Vaghan Walsheman boren to be denszein,' etc. (P. P. C. v. 255, 256). To check this evil again it was ordered (ut supra) that

Predominance of private interests in the council.

no councillor was to promise his influence beforehand in favour of any suitor, but should simply answer to all solicitations that the matter would be considered by the council.

Private councils of lords and others.

corrupcion . . . off the seruantes and counsellers off . . . the lordes.] Just as the King had his Privy Council in which were debated, as we have seen, all matters affecting the administration and general policy of his kingdom, so the great lords spiritual and temporal, and other persons of importance, had their separate councils for the management of their estates, the discussion of their political affairs and line of conduct, the maintenance of their interest and influence, the support of their adherents and partizans, &c. Thus in 1401 Henry Spencer, Bishop of Norwich, is ordered, if he cannot appear in person, to send 'quatre trois ou deux personnes suffisantz et discretz de vostre conseil' (P. P. C. i. 165). Lord Lovel writes 'y by th' avise of my counceill,' &c. (Paston Letters, i. 442). The Duke of Norfolk writes, 'consayled be the Lordes of our Consayle and oder of owr Consayle' (ib. ii. 247); the Earl of Oxford, 'I . . . with my Counceyle, shall take a direction for the suretie of all that cuntre' (ib. 421). We hear of the council of Humphrey duke of Gloucester (Bekynton's Correspondence, i. 281); and Bekynton himself was Gloucester's Chancellor (ib. ii. 361). The Abbot of St. Alban's consults 'viros solidos sui temporalis concilii' (Amundesham, i. 314); and Pecock has an interesting passage on the sums spent by the monasteries 'upon worthi gentil men leerned in lawe for mentenance of her riȝtis, and upon knyȝtis and squyers . . . into her honest chering and weel fare, and into nurisching of frendschip and of loue' (Repressor, pp. 370–1;—a passage which gives us some insight into the various interests which were harassed by the dissolution of the monasteries. Cf. Whethamstede, II. xxv–xxxii). The Earl of Northumberland appoints the Prior of Tynemouth 'to be of my Councelle,' with 'an annuyte of x. li. by yer . . . during my plesure' (Whethamstede, ii. 218); and the wages of the 'consiliarii domi' are among the expenses of a Viscount's household enumerated in the *Liber Niger* (Ordinances, &c. p. 30). The development of these lesser councils was analogous to that of the royal council. At first they were purely feudal in their composition. Thus Archbishop Thurstan grants a charter to Beverley 'consilio meorum baronum' (Select Charters, p. 109). But in the course of time they too assumed a more official character. The

Their development analogous to that of the King's council.

extensive and scattered estates of the nobility, their various rights of patronage, &c., the litigiousness of the age, and perhaps in some cases, as Pecock hints (Repressor, p. 306), their own aristocratic ignorance, necessitated the employment of a vast number of men of business, and of men learned both in the common and canon law. And it is not always easy to determine whether, in any given case, by the phrase 'of hys councell' is meant councillors in the general sense, or 'counsel' in the legal sense. Often of course the two would be coincident. The latter however are generally termed 'councell lerned, both spirituell as temporell;' and so thoroughly was their relation to their employer recognised, that they are always exempted from the operation of the numerous statutes which forbid the giving of liveries. From the Paston Letters (i. 16, 174) it would appear that lords often had persons 'of their councell' specially retained in the separate counties to look after their interests in that particular quarter. In the former passage William Paston, afterwards Judge, complains that his salary had long been allowed to fall into arrears by the Duke of Norfolk. But the councils of great lords were not composed entirely of lawyers and men of business. We have seen how the Duke of Norfolk speaks in almost royal style of 'the *lords* and others of our council;' and Lord Scales writes of himself as being one of the same nobleman's council (Paston Letters, ii. 344). This relation was at once the symbol and the cement of political and family connexion. In Waurin (ed. Dupont. iii. 186 ff.) is a very interesting letter from Louis XI's ambassador describing the interview which he had with Warwick and his council. (On the Queen's council and officers, see notes to Chap. x. p. 265, above). And in these lesser councils evils prevailed, as Fortescue here hints, similar to those which existed in higher quarters; corruption, maintenance, and 'brocage' or undue influence. Of this the annals of St. Alban's furnish us with a good example. In 1435 the abbot wished to obtain from Lord Grey of Ruthin a surrender of certain rights which he had over the Priory of Beaulieu, a cell belonging to St. Alban's, as the representative of the original founder of the cell. The manner in which the surrender was obtained shall be told in the annalist's own words: 'Cum didicisset [abbas] quomodo fundator dictus, *ad instar aliorum procerum*, quosdam habebat secum peculiares consiliarios, per quos in talibus arduis negotiis benignius regi vellet, mox *per media pecuniaria* ipsorum notitiam conquaesierat, propositaque materia, eos penes dominum mediare procurabat.

Corruption.

Sicque horum mediis concessit tandem dominus relaxationem facere, relaxavitque,' &c. (Amundesham, ii. 106. The sums actually paid on this score are given in the accounts of the Abbey, ib. 267. They amount to £97 6*s.* 8*d.*). The corruption of the King's council by bribes was one of the things complained of by Cade (Stowe, p. 389 a).

no mater . . . kept prive.] Cf. Ægidius Romanus, *De Regimine*, III. ii. 17, who derives the word *consilium* from *con* and *silere*; *i.e.* a place where many are silent together. Cf. Bacon's Essay *Of Counsel.*

how thai had sped, &c.] In the articles drawn up in the Parliament of 1406 for the regulation of the council it is laid down that no councillor or officer is to promise his support beforehand to any applicant, nor to give him any information until the matter has been finally decided on by the council (Rot. Parl. iii. 587 b; cf. sup. p. 308).

How mey þe kyng be counsellyd to restrayne gyvinge, &c.] See notes to the last Chapter, pp. 292–3, above.

corodeis or pencions off abbeyis.] On these see notes to Chap. xviii, pp. 337–9, below.

Oath of the Judges.

like as þe Justices . . . be sworne.] The oath to be taken by the Judges is prescribed by a statute of 20 Edw. III called 'the Ordinance for the Justices.' The part of it which illustrates the present passage runs as follows: 'That ye take not . . . gift nor reward . . . of any man that shall have any plea or process hanging before you; . . . and that ye take no fee as long as ye shall be justice, nor robes of any man, great or small, but of the king himself; and that ye give none advice or counsel to no man, great or small, in no case where the king is party,' etc. A petition against William Paston for alleged systematic violation of this oath is in Paston Letters, i. 36. On the corruption of Judges, see Introduction, Part I, p. 22, and notes to Chap. vi. p. 223, above; and on the Judges' oath, cf. *De Laudibus*, c. 51: 'Jurabit etiam, quod . . . non recipiet . . . ab aliquo, preterquam a rege feodum, aut pencionem aliquam, seu liberatam, neque donum capiet ab habente placitum coram eo,' &c.

It shall not be necessarie þat the xij spirituell men . . . haue so gret wages, &c.] This passage illustrates a point in which the mode of life in the middle ages differed from that of the present day (cf. Introduction, Part II, pp. 44–5, above). Persons whose occupation as lawyers, government officials, &c., obliged them to be

in London during a portion of the year did not as a rule reside there with their wives and families, but made their homes in the country, going themselves alone to London for such periods as their work rendered necessary. A letter in the Paston collection (i. 186) hints that this absence was not always unwelcome, and that pretexts were sought for extending it. 'Ulveston is styward of the Mydill Inne, and Isley of the Inner Inne, because thei wold have officz for excuse for dwellyng this tyme from her wyves.' Thus John Paston resided in the Inner Temple (ib. 41) during term time, while his wife managed his property and family in Norfolk; sending her husband from time to time rabbits and other country produce to help his housekeeping (ii. 21). Sir Thomas More complains in the same strain of the miseries of lay ambassadors who had while on duty to keep two households: 'I never liked the office of an ambassador. We laymen and you priests are not on equal terms on such occasions . . . When a priest starts on his mission he can take his whole family with him . . . but whenever I am absent I have two families to keep, one at home and one abroad . . . And I cannot prevail on my wife, children, and servants . . . to stop eating until I return' (cited by Brewer, Henry VIII, i. 65). Another reason, not mentioned here by Fortescue, why the salaries of clerical officials were not so high as those of their temporal colleagues was that the former could be supplemented out of the revenues of the church. Thus in 1437 Henry VI granted to Louis of Luxemburgh, Archbishop of Rouen and Chancellor of France, the temporalities of the See of Ely *in part payment* of an annuity of 1000 marks which had been previously granted him (Rymer, x. 671, 666; cf. Bekynton's Correspondence, i. 4–8; Rot. Parl. v. 11). Gascoigne says roundly: 'jam ecclesiæ et episcopatus sunt pensiones et mercedes servorum regum et dominorum mundanorum' (p. 181). It was in fact part of the tacit compact which existed between the Crown and the Church during the later middle ages, that the former should be allowed to make use of the revenues of the latter in this way; (cf. Creighton, Hist. of the Papacy, i. 45: 'Gradually the king and the pope arrived at a practical understanding as to the division of spoil. If the offices of the church were to furnish salaries for the king's ministers, they must also supply revenues to the head of the church') In the memorial of 1470 (App.

Residence in London less common in the middle ages.

Clerical officials paid out of church revenues.

B. § 6) Fortescue does however mention this point: 'it is not like but that he woll avaunce the spirituell menne of his counseill with benefices as they shalbe worthy.' So in the *Liber Niger*, if any of the King's chaplains 'be benefysed to xl. li. he taketh no wages in this courte' (Ordinances, &c., p. 35).

Parliament of Paris.

the spirituell juges in the courte off parliment off Parys, &c.] Among the expenses of the English administration in France for the year 1428 is set down the following: '*Item*, dominis judicibus principalibus regni Franciæ, viz., præsidentibus, doctoribus legis civilis et consiliariis in parliamento apud Parys' (English in France, ii. 536). And in 1431 the king's council in France asked the advice of the council in England upon this among other points: '*Item*, for þe paiement of þestates of þe parlement, of chambre of þaccomptes, and of oþer officers of þe reaume of France. Considering þat of þat lande arrisethe noo commoditee to paie hem withe' (P. P. C. iv. 94). But in neither case is the distinction mentioned which Fortescue here draws between the lay and clerical members of the court. The remark may however be noted as another instance of the care with which Fortescue while abroad compared French and English institutions. In his memorial of 1470 (App. B. § 3) Fortescue sets down 300 and 400 *scutes* as the salary of the clerical and lay judges respectively. The scute as we have seen (notes to Chap. iii. p. 198, above) was worth 3*s.* 4*d.* In P. P. C. iii. 63, the frank is estimated at 2*s.* 6*d.*, *i.e.* eight to the pound sterling; in Worcester's collections (English in France, ii. 534) it is reckoned at the rate of three franks to the noble, *i.e.* nine to the pound. Either estimate causes a considerable discrepancy between the two statements of Fortescue. But perhaps some other frank is intended. In Appendix D. to Rymer (p. 317) we have a frank which is equal to eight gold scutes. In Rymer, xii. 115, there is an ordinance fixing the relative value of certain English and French coins.

consiliarii nati.] v. s. p. 307.

Sheriffs annual.

temporell men wich . . . bith made shyreffes for a yere.] For the earlier history of the office of sheriff see S. C. H. i. and ii. The first establishment of annual sheriffs was due to the baronial government of 1258 (ib. ii. 78, 206 ff.; Select Charters, p. 391). This limitation was finally fixed by statute (14 Edw. III. St. 1. c. 9; re-enacted 28 Edw. III. c. 7; 42 Edw. III. c. 9); while by 1 Ric. II. c. 11, three years were to intervene before any person was re-appointed sheriff. The reason for this policy

is clearly given in the first of these statutes, viz. that by continuance in office sheriffs are 'encouraged to do many oppressions to the people.' By St. 1 Henry V, c. 4, the same limitations were extended to their officers, and for a similar reason, viz. that owing to the continuance of these officers in their situations, the king's lieges 'dare not pursue or complain of their extorsions and oppressions' (cf. Rot. Parl. iv. 10 a; P. P. C. iii. 220). In 1421 however the Statute of Edward III had to be suspended for four years, because, owing to 'pestilences within the realme, and wars without,' there was no longer a sufficiency of good and substantial persons to undertake the office of sheriff (9 Hen. V. St. 1. c. 5; cf. Rot. Parl. iv. 148 b). In the very next year the commons petitioned for the revocation of this Statute of Henry V, though without effect (Rot. Parl. iv. 191 a). In 1445 a petition to the commons sets forth that in 'divers shires in Englond' sheriffs have remained in office 'sum x yere, and sum xii yere, and more,' which is 'lykly in tyme comyng to be importable hurt, open disheritaunce, and supportation of manslagter, perjure, and grete oppression to many of the liege people of oure Soveraigne Lord' (ib. v. 108); in consequence of which a statute (23 Hen. VI. c. 7) was passed, whereby an annual penalty of £200 was imposed on all who should occupy the office of sheriff for more than a year. In 1459 the commons complained of the 'grete extortions and mesprisions' of sheriffs and their officers in Chester and Wales owing to the fact that they 'hav estate terme of her lyves in the said offices,' and prayed that their patents might be cancelled, which was granted with certain reservations (ib. 366 b. The complaint is illustrated by a grant in P. P. C. v. 224, of the sheriffdom of Cheshire to a man and his son for the terme of their joint lives. In Westmoreland the office seems to have been hereditary, ib. vi. 194). By St. 8 Edw. IV. c. 4, an indemnity was given to sheriffs who had remained in office for more than a year during the first three years of the reign, such continuance having been rendered necessary by the disturbed state of the country (cf. Rot. Parl. v. 631 a). By 12 Edw. IV. c. 1, and 17 Edw. IV. c. 7, the law was slightly relaxed to obviate the inconvenience caused by the interval which often elapsed between the expiration of one sheriff's term of office, and the entry of his successor on his duties (cf. ib. vi. 154 a, 191 a). The words 'be reason of þer enheritaunce and livelod' are illustrated by numerous statutes requiring the sheriffs to have a

Property qualification.

qualification in land within their county. The earliest enactment on this subject is in the Provisions of Oxford (Select Charters, p. 391). The reason given in many of the statutes is, in order that they may have 'whereof to answer the king and his people, in case that any man complain against them' (4 Edw. III. c. 9). And in a petition already alluded to it is stated that the appointment of unsubstantial persons to the office has been a cause of great loss to the king, and of oppression to his subjects (Rot. Parl. iv. 148b).

Extortion.

On the partiality and corruption of sheriffs and other local officers, see Introduction, Part I, pp. 20, 28–30, above. One cause of their extortions may have been the fact mentioned by Fortescue, that they had no regular salary, and were therefore driven to indemnify themselves in irregular ways. Thus we hear of an illegal exaction introduced by the sheriffs of Northumberland, called head-pence, which consisted in extorting from the county every third and fourth year £51 (*i.e.* £102 every seven years), so that when those years came round there was great competition for the office (Rot. Parl. iv. 291 a). Another device was to raise from the county more than was required for the wages of the knights of the shire, and appropriate the balance (ib. v. 110 b; St. 23 Hen. VI. c. 10).

Embarrassment of the local revenue.

Another cause of extortion was the embarrassed state of the local revenue, which was also one reason why it was so difficult to find reputable people willing to undertake the office. Thus in 1455 Sir John Tempest refused to undertake the office of sheriff of Lincolnshire, unless security were given 'that he take noo losse in þe saide office' (P. P. C. vi. 263). In the same year Hugh Louther, Esq., was threatened with a fine of £2000 if he refused to execute the office of sheriff of Cumberland (ib. 271), while the late sheriff of Nottingham and Derby complained, that he and his predecessors were held accountable for revenues and profits 'the whiche of mony yerez a goon were not levable ne paieable' (ib. 272). This embarrassment of the local revenue was partly due to the decline of various towns and districts owing to war, pestilence, floods, incursions of the Scots, loss of trade, &c. The rolls of parliament are full of petitions from towns and counties, asking for a reduction of the terms at which they were assessed, on one or more of these grounds (*e.g.* Rot. Parl. iii. 438, 447, 514–8, &c. This cause affected the central exchequer also, because it diminished the quota which the towns were able to pay to the tenths and fifteenths, which were levied on the basis of a valuation made in the reign of

Edward III, cf. S. C. H. iii. 611). Sometimes the local revenue could not be collected, because of the disturbed state of the country (Rot. Parl. vi. 63 b). But the chief cause of the decline of the local revenue was that it, like the central exchequer, was burdened with grants, annuities, pensions, &c. Throughout the whole of this period the rolls of parliament are full of petitions complaining that, in spite of these burdens, sheriffs were expected to raise the old amount of revenue from their shires (*e.g.* Rot. Parl. iii. 434 b, 469 a, &c.; vi. 64 a). In 1449 the Master of the Buckhounds complained that he could not obtain payment of his salary, which was charged on the revenues of Surrey and Sussex, because, as the sheriff asserted, the revenues of these counties were 'soo charged of othir wages and annuytees graunted by your letres patentes to othir divers personys' (Rot. Parl. v. 167). In Nov. 1446 the Master of the Harriers had been in a similar plight for a similar reason (Issues of the Exchequer, p. 456); while in 1455 the commons petitioned that all these local grants might be resumed, because owing to the deficit on the local revenue 'noo persone of good wille dar take upon him to be sherref in any shire for the most partie in this lande' (ib. 328 a). A third cause of the oppressions complained of was the exactions made by the officers of the exchequer from the sheriffs, escheators, &c., which obliged the latter to indemnify themselves by means of similar exactions from their districts (Rot. Parl. v. 323 b; St. 33 Hen. VI. c. 3). Cade, in one of his proclamations, traces the extortion of sheriffs, &c. to their habit of letting their offices out to farm (Stowe, p. 389). In *De Laudibus*, c. 24, Fortescue gives an account of the office and mode of appointment of sheriffs.

Exactions at the exchequer.

materes off þe pollycye off þe reaume; as how, &c.] Among the causes of summons of the Parliament of 1455 are enumerated some of the subjects of deliberation which Fortescue here mentions: 'to provide and ordeine meanes to sette aside the beryng out of Gold and Silver of this Reaume; . . . to purveie and ordeine for the seure kepyng of the See,' &c.; and special committees were appointed to deal with these and other points (Rot. Parl. v. 279 f.). On Committees of Council something has been said; above, p. 296. Bacon in his Essay 'Of Counsel' recommends that these committees should be permanent for certain subjects; which was in fact the system in vogue under the Tudors: 'I commend also, *standing commissions*; as for Trade, for Treasure, for War, for Suits, for

Committees of Council.

some Provinces.' Ægidius Romanus enumerates five chief subjects on which a king's councillors should deliberate: (1) the revenue; (2) food, the prices of which they must fix if sellers sell at too high a rate; (3) the safeguard of the state from seditions, &c.; (4) peace and war; (5) legislation; *De Regimine*, III. ii. 11.

Import and export of the precious metals.

how þe goyng owt off þe money may be restrayned, &c.] Seeing that it was the accepted doctrine during the middle ages, and till the time of Adam Smith, that money alone was wealth, it is not surprising to find that a large part of the commercial legislation of the middle ages is directed towards stimulating artificially the importation of the precious metals into England, and preventing their exportation. Some illustrations of these two points may be given from the statutes and other documents of the period. In 20 Ric. II it was enacted that every merchant exporting wools, &c. from England should bring to the king's Bullion in the tower of London within half a year an ounce of gold for every sack of wool, half last of hides, or 240 wool-fells (Rot. Parl. iii. 340 a, 429 a; cf. St. 8 Hen. V. c. 2). The rules at the Staple of Calais with reference to the payment for wools seem to have been very strict. In 1437 the commons in vain petitioned for a relaxation of them, on the ground that they drove foreign merchants away (Rot. Parl. iv. 508). In 1442 in answer to a renewed petition they obtained a statute, by which it was ordered that only one third of the value of the wool sold was to be paid for in silver bullion, which was to be brought to the mint at Calais to be coined (ib. v. 64; St. 20 Hen. VI. c. 12). But even this was found unworkable, and before the year was out Henry VI had to grant dispensations for the non-observance of the statute. One main reason of this was, that the Duke of Burgundy had established so strict a search on his frontiers to prevent the passing of bullion, &c. to Calais, that merchants from the Low Countries, who were the chief customers of the English staple at Calais, were unable to comply with the regulations in question. The Mayor of the staple stated at the time, that they had often been obliged to dispense with these regulations on their own authority (P. P. C. v. 216–222; cf. Rymer, x. 605). By St. 3 Edw. IV. c. 1 it was enacted, that half of the price of all wools sold at Calais should be paid 'in lawfull money of Englond, Plate or Bullion of Sylver or Gold' (Rot. Parl. v. 503; cf. ib. 275 b).

The regulations against the exportation of bullion, plate, or coin

were equally stringent. Foreign merchants were required to export in exchange for the wares which they imported only English merchandise, and not money. Thus the double object was served, as it was thought, of preventing the outflow of the precious metals, and stimulating the market for English goods. Very complicated regulations were made with a view to effecting these objects, and the frequency with which they were re-enacted shows that it was not found easy to enforce their observance. The earliest statute on the subject of which the date is certain is 27 Edw. I, *De Falsa Moneta*. The following are the chief statutes during our present period: St. 2 Hen. IV. c. 5; 4 Hen. IV. cc. 15, 16; 5 Hen. IV. c. 9; 2 Hen. VI. c. 6; 8 Hen. VI. c. 24; 27 Hen. VI. c. 3; 17 Edw. IV. c. 1; all of which are founded on petitions to be found in the Parliament Rolls for those years. The French wars, the expenses of the English government in France, the ransoming of prisoners, &c., caused a great drain of money from England to the Continent (cf. Rot. Parl. iv. 252). In 1419 Parliament empowered the council to take measures to stop this outflow, and ordered that the supplies for the army should be forwarded as far as possible in kind and not in money. In this very year 50,000 marks had been sent to Normandy to the king's treasurer at war at one time (Issues of the Exchequer, p. 360; cf. ib. 422). In the Parliament of the following year the scarcity of money was alluded to in the Chancellor's opening speech (Rot. Parl. iv. 118 a, 123 a; cf. ib. iii. 658 b). In 1429 commissioners were appointed to enquire into jewels, money, plate and bullion exported to Picardy without licence, contrary to the statute (P. P. C. iii. 329). In 1455, as we have seen, a committee was appointed by Parliament to discuss the whole subject (Rot. Parl. v. 279 b). One great reason given for resisting the papal exactions, provisions, first-fruits, &c., was the way in which they drained the country of money (ib. iii. 490 a, 557 a, 621 a; St. 6 Hen. IV. c. 1; 9 Hen. IV. c. 8). The permanent annexation of the alien priories to the Crown was petitioned for on the same ground (Rot. Parl. iv. 22; cf. Rymer, ix. 280). The first of the three Fifteenth Century Chronicles printed by Mr. Gairdner notices under the year 3 Edw. IV the prevalence of low prices and great scarcity of money, but it does not seem to strike the writer that the two facts were connected (p. 80). Among the documents of the period are numerous licences to export money, plate, &c. These are for persons going abroad on military service,

Drain of money from England to the Continent.

Licences to export money, &c.

for prisoners sending for their ransoms, for foreign ambassadors and papal collectors leaving the country, for English ambassadors starting on their missions, &c. For the council of Basle alone licences amounting to over £33,000 may be found in Rymer, x. 525 ff. For the congress of Arras in 1435 licences are found amounting to over £22,000. If the relative value of money be borne in mind it will be seen that these sums are very considerable (cf. ib. 610 ff. and P. P. C. iv. 302). On the first patent roll of 36 Hen. VI there is a memorandum 'de mediis licitis et honestis per bonam policiam practicandis concern' aurum et argentum' (Cal. Rot. Pat. p. 298 a). In the same way it was attempted to control and limit the foreign exchanges, especially that to the court of Rome: or, as they were called, the temporal and spiritual exchanges (Rot. Parl. iii. 543 a, 626 b; St. 11 Hen. IV. c. 8. An earlier statute on the subject is 14 Ric. II. c. 2; cf. Cal. Rot. Pat. p. 266 a. Gascoigne, p. 52, complains of the way in which the foreign exchanges impoverished the realm). The king received 2*d.* on every noble, *i. e.* 6*d.* in the pound or 2½ per cent. on all money sent abroad by way of exchange (Issues of the Exchequer, pp. 411, 421; cp. the accounts for the year 1433 printed in the notes to Chapter vi, p. 213, above, where the proceeds of this tax are set down at £79 13*s.* 4*d.*). In the Patent Roll of 18 Hen. VI we find the following notice, 'Incorporatio pro cambiatoribus ac aliis operariis cambiorum London' et Cantuar' ac ampl' libert'.' (Cal. Rot. Pat. p. 282 a).

Control of the exchanges.

how þe prises off marchaundise growen in this lande, &c.] The endeavour of the foreign merchant was naturally the exact converse, viz. to enhance the price of the goods which he imported, and to beat down the price of English merchandise. There are many bitter complaints in the Rolls of Parliament against foreign merchants, brokers, &c. On this score the honest Englishman was firmly persuaded that he was constantly being cheated by the knavish foreigner; or, as the author of the 'Libel of English Policy' puts it, foreigners

Jealousy of foreign merchants, &c.

> 'Wypen our nose with our owne sleve.'
>
> (Political Songs, ii. 176.)

Thus, in 1422 and 1433, the commons were petitioned to enact that no alien might occupy the office of broker, because the foreign brokers always favoured the foreign merchants, and by means of the information which they supplied, enabled the latter to 'enhaunce

ye prises of her merchandises, yat is to sey, spicerye, wynes, and other, and abaten the prises of owre merchandise, as wolle and clothe, and other' (Rot. Parl. iv. 193 b, 449 b). The petition was on both occasions refused by the king. It was however renewed in 1442, when appeal was made to a statute of 50 Edw. III (ib. ii. 332), which, it was alleged, had been put in execution as recently as 9 Hen. V. The king promised to inspect the statute and provide a remedy, but no new statute was enacted (ib. v. 56). Similar complaints were made in 1429 against certain inhabitants of Calais, who 'with Merchauntz straungiers of her affinite . . . bryng downe ye pris of ye commodite of yis Roiaume.' At the same time it was declared that foreign merchants, by a system of buying on credit, 'have ful gretely encresed and avaunced her Merchandises, and broght doune to noght ye pris of ye commodite of yis Roiaume,' and very interesting statistics are given to prove this point (ib. iv. 360–1; St. 8 Hen. VI. cc. 20, 24, founded on these petitions; cf. Rot. Parl. iv. 509 a; v. 334 b). Very elaborate measures of supervision for foreign merchants were enacted with a view oi preventing these evils (ib. v. 24 b; St. 18 Hen. VI. c. 4; cf 1 Ric. III. c. 9). One way of 'abating' the price of imported merchandise which was sometimes adopted, was to fix the price of it by Statute. Thus in 1411, pepper, 'q'est le pluis usuel spicerie a tout le Commune de Roialme,' the price of which had been artificially enhanced by the 'grocers and Lombards,' was ordered to be sold at 1*s.* 8*d.* the pound, and no more (Rot. Parl. iii. 662 a). The statutes compelling the import of bow-staves, and fixing their price, may also be remembered here (above, notes to Chap. xii. pp. 282–3). And one way of 'holding up' the price of native products which then, as later, was frequently resorted to, was to forbid the importation of similar articles. This protective policy seems to have been pursued with special vigour under Edward IV, and the legislation of the merchant king is mainly occupied with the regulation of trade and manufactures. Thus the importation of foreign cloth was forbidden (St. 4 Edw. IV. c. 1; Rot. Parl. v. 502 b, 563 a). No wrought silk was to be imported, but only the raw material (St. 3 Ed. IV. c. 3; Rot. Parl. v. 506 a; vi. 222 b. This was merely a re-enactment of St. 33 Hen. VI. c. 5, which had expired. Cf. Rot. Parl. v. 325 a). No foreign corn was to be imported except when wheat was above 6*s.* 8*d.*, rye above 4*s.*, and barley above 3*s.* the quarter (St. 3 Edw. IV. c. 2; Rot. Parl. v. 504 a. When the

Prices fixed by statute.

Protection.

price of corn fell below these figures, it might be exported; ib. iv. 500 a; v. 31 a; St. 15 Hen. VI. c. 2). While in St. 3 Edw. IV. c. 4 (cf. Rot. Parl. v. 506 b), there is a long and interesting list of articles the importation of which is forbidden. Similarly the exportation of unwrought horns was forbidden, lest foreign workers in horn should rival the English, who had an admitted superiority (St. 4 Edw. IV. c. 8; Rot. Parl. v. 567 a). In the tract on 'the Comodytes of England,' Fortescue (if it be by him) enumerates as the chief products of England, wool, cloth, tin, lead, and coal (Works, p. 551). Of these the first was by far the most important, and we have seen how in some of the extracts given above it is spoken of simply as '*the* commodity of England.' Coke (2 Inst. c. 25, quoted by Waterhous, p. 382) says: 'Divide our Native Commodities exported into ten parts, and that which comes from the sheep's back is nine parts in value of the ten.' This importance is well brought out by Mr. Thorold Rogers in the Preface to Gascoigne's 'Liber Veritatum,' p. xxv: 'It is the only produce which I have been able to find, in the long range of my enquiries into the history of finance, which was, in the middle ages, so absolute a necessity and so absolute a monopoly that an export duty could be levied on it, without diminishing the demand for it in the foreign market. Financiers have always desired to find some product on which they could levy such a tax as the foreign consumer would be constrained to pay. Except in the case of English wool, from the thirteenth to the end of the sixteenth century, the search has been as profitless and as disappointing as that for the philosopher's stone or the quadrature of the circle. But during the fourteenth and fifteenth centuries, English wool satisfied every condition of that financial problem which is seeking to impose an import duty that is to be paid by the consumer. It was a necessity. There was no substitute for it. It could hardly be economised. There was no other source of supply. The hundred years' war was carried on out of the taxation of wool, and the tax was paid by those upon whom war was made.' To the same effect, 'Work and Wages,' p. 79.

Importance of the wool trade.

owre nauy.] On this, cf. the notes to Chap. vi. pp. 231–9, above.

how also þe lawes mey be amendet.] On this probouleutic function of the council, cf. pp. 305–6, above. In the *De Laudibus*, c. 35, Fortescue declares that all the laws of England are 'very good,' either actually or potentially, because if they are defective in any

point they can always be reformed in Parliament. Cf. Fortescue, Legal Opinions and Judgments, p. 80.

þe clerke off the rolles.] This is the officer whom we now call *Master of the Rolls*. Clerk of the Rolls was at this time his most usual official title; but the Paston Letters show that the more modern phrase was even then becoming the prevailing one in familiar language. Out of six places in which this officer is mentioned, he is in one only (i. 393) called 'Clerke of the Rolles;' in one instance (iii. 99) the term 'Master off the Rollys' is used absolutely; in the remaining four he is called 'my Maistr of the Rolles' (*e.g.* i. 430). This last phrase possibly guides us to the origin of the modern title, the full style probably being that given by Foss under the reign of Henry VI (Judges of England, iv. 221), 'my Mayster the Clerke of the Rolls.' The title *master* is found also in formal documents (*e.g.* P. P. C. v. 126; Rymer, xii. 14; Cal. Rot. Pat. p. 322 b). He is also called Keeper (Custos) of the Rolls (*e.g.* P. P. C. vi. 336; Rot. Parl. v. 447 a; Rymer, viii. 181, &c.) Sometimes two of these titles are used in combination. Thus we find (Rot. Parl. v. 505 b), 'Maister or Keper of youre Rolles;' and 'Clerk or Keper of oure Rolles' (ib. 528 a, 578 a); 'Clericus *et* Custos Rotulorum' (Cal. Rot. Pat. p. 294 a). This officer derived his name from the fact that he was charged with the custody and arrangement of the Rolls of Chancery. He is first mentioned in the reign of Edward I, under the title of 'Custos Rotulorum Cancellariæ domini Regis;' but the office must have existed previously. He was at first merely one of the senior clerks, or, as they afterwards became, Masters of the Chancery. And even after he had become an independent officer, he was generally appointed from among their number. From the time of Edward III, the office was permanently combined with that of 'Custos domus Conversorum,' an institution founded by Henry III for the reception of converted Jews. The expulsion of the Jews under Edward I having much diminished the need for such an institution, the house was annexed as a residence to the office of Master of the Rolls; cf. Rot. Parl. v. 447 a: 'Domus nostra Conversorum, prefato officio per progenitores nostros quondam Reges Angliæ ab antiquo disposita et annexa.' In Issues of the Exchequer, p. 471, Thomas Kyrkeby is called Clerk of the Rolls, and master of the house of converted Jews (29 Hen. VI). The grant of the office was sometimes for life, sometimes during the king's pleasure, sometimes

Clerk or Master of the Rolls.

The *Domus Conversorum.*

during good behaviour. The Master of the Rolls was nearly always one of the persons charged with the custody of the Great Seal, and with the transaction of the business of the Chancery in the absence of the Chancellor (see, for the history of the office, Foss, u. s. iii. 12 ff., 326 ff.; iv. 9 ff., 187, 221, 387 f.).

putt in a boke.] We hear occasionally of the 'Book of the Council;' but it was rather a record of actual proceedings than a collection of rules of procedure, which is what Fortescue seems here to have in view; though, no doubt, the proceedings of the past would serve as precedents for the future (cf. P. P. C., II. xxvi. f.; V. i–vii; VII. i–ii; Rot. Parl. v. 283).

CHAPTER XVI.

How the Romaynes prospered . . . counsell.] On the whole of this chapter compare the tract in Appendix A, 'Example what good counseill helpith and avantageth and of the contrare what folowith;' which almost reads like an alternative (earlier) version of the present chapter.

Need of good counsel.

The need and advantage of good counsel is a subject naturally much dwelt upon in the opening addresses of the Chancellor to Parliament. Thus Henry Beaufort in 1404, taking for his text the words *Multitudo Sapientum*, 'molt discretement et clergialment monstra et declara, Coment par bone et sage Conseil chescun Roialme serroit de droit governez' (Rot. Parl. iii. 522; cf. ib. 567 a; iv. 3 a, 261). So John Stafford, Archbishop of Canterbury, in a memorandum written about 1443–6, urging the king to summon a council, reminded him that 'every reame and lordshippe wel ruled is goeverned by grete forsighte and goode and sade policye and advisinesse of Counsail' (P. P. C. vi. 339). And in the act which committed the government to the Privy Council during the second illness of Henry VI, it is stated 'that every Prince must of verray necessitee have Counsaillers to helpe hym in his charges, to whome he muste trust and leene' (Rot. Parl. v. 290 a). Gower, in his address to Henry IV, says:

> 'Aboute a kyng good counseil is to preise,
> Above alle othre thinges most vailable.'
> (Political Songs, ii. 8.)

And the *Compendium Morale* quotes on this subject Cic. de Officiis, 'qui agunt cuncta consilio reguntur sapientia' (f. 55 b). And, as we have seen, Rehoboam with his young counsellors is a regular commonplace of all historians and political writers (above, notes to Chap. x. p. 269). Vincent of Beauvais (De Morali Inst. Princ.) has a chapter (c. 12) on the choice of counsellors, which is again a favourite theme with these writers. He remarks further (c. 15) that for an unlettered king especially lettered counsellors are necessary. Cp. Commynes, i. 10; ii. 2, 3; iii. 5.

The Romaynes, while thair counsell, &c.] For Fortescue's views on the Roman constitution, cp. N. L. N. i. c. 16. And with special reference to the government of the Senate, cf. ib. c. 23: 'Romanorum regnum cccxx. Senatorum consultu diu regulatum a minimo in maximum mundi crevit imperium.' And this last passage shows whence Fortescue derived some of his ideas of the greatness of Rome under Senatorial government, viz. from 1 Maccabees viii. 1–17; cp. especially v. 15: 'Quotidie consulebant trecentos viginti, consilium agentes semper de multitudine, ut quae digna sunt gerant.' This passage is quoted by the Pseudo-Aquinas, *De Regimine*, iv. c. 25. He however, following St. Augustine, attributes the greatness of Rome to three causes: 'Una sumitur ex amore patriæ, alia vero ex zelo justitiæ, tertia autem ex zelo civilis benevolentiæ' (iii. c. 4).

Imperialist theories of the Middle Ages.

monarchie . . . off all þe world.] On this, cf. Janet, *Histoire de la Science Politique*, i. 388: 'Les doctrines impérialistes, comme les doctrines théocratiques, reposaient les unes et les autres sur des fictions et des mensonges historiques. Tandis que les partisans du pouvoir ecclésiastique invoquaient deux faits complètement fictifs: la donation de Constantin et la translation de l'empire des Grecs aux Germains, hypothèse fondée sur le serment d'Othon, . . . les jurisconsultes impériaux n'étaient pas de leur côté en reste d'inventions historiques et juridiques. Aux fictions théocratiques ils opposaient deux fictions du même genre: 1° la perpétuité de l'empire romain; 2° la monarchie universelle.' Fortescue, though in some ways a strong papalist (cf. Introduction, Part III, p. 103, above), shows here that he is a thorough believer in both these imperialist fictions, which indeed dominated more or less the whole of the Middle Ages. The former will be dealt with in a later note; we are concerned here with the theory of a universal empire. On this cp. *De Laudibus*, c. 14: 'Lex Civilis,

Universal Empire.

qua sacrum regulatur imperium, sufficiens arbitratur ad orbis regimen universi.' N. L. N. i. c. 32: 'Nobilissimæ Leges illæ Civiles quæ quasi totius mundi curam tamdiu egerunt.' Ib. ii c. 53: 'Imperator etiam, cui totus olim mundus obtemperaverat' (Works, pp. 95, 171). So too Pecock, after describing in an ascending series the various gradations of authority, concludes, 'til we come vnto oon highest emperour, bi whos hiȝest oon heed schal reste and pees be mad thoruȝ alle peple' (Repressor, p. 449). These views had of course their most glorious votary in Dante. They appear in all his works, but he reduced them to system in the *De Monarchia*. They came out strongly in the controversies between Lewis of Bavaria and the Popes, but that contest had little influence on England (S. C. H. iii. 293).

Octavian . . . commounded all þe world to be discribed, &c.] Luke ii. 1: 'Exiit edictum a Cæsare Augusto ut describeretur universus orbis.' Cp. the account of Domesday given by Florence of Worcester: 'Willelmus rex fecit describi omnem Angliam.' Higden represents Octavian as the national hero of the Romans (Polychr. v. 336). In a poem addressed to Henry VI on his coronation the poet wishes (somewhat inconsistently) that he may have

'Conquest, victorye, with Cesar Julius,'

and yet be

'Peace preferryng as Octovyan.'

(Political Songs, ii. 43.)

Fictitious history created by the Middle Ages.

It may be remarked that both of Julius and Augustus the Middle Ages created extremely ideal characters very wide of the historical reality. Nothing in fact is more curious than the way in which the Middle Ages, out of the fragments of historical knowledge which came down to them, fantastically re-constructed the fabric of the past, so that in reading the mediæval version of earlier history we seem to be moving in a wholly unreal world. The Alexander, Julius, Augustus, Virgil, and Charles the Great of mediæval literature are as different from the historical realities as can well be imagined. But it is not easy for us to appreciate the enormous difficulties in the way of acquiring a correct knowledge of the past which then existed. (On this cf. Riezler, Die literarischen Widersacher der Päpste, § 9). One of the first persons to study history in a really critical spirit was our own Pecock. His disproof of the Donation of Constantine (Repressor, pp. 352–366) is a very

notable piece of work, and worthy to rank with Valla's famous tract on the same subject.

Causes of the decline of Rome.

but aftir this . . . the estate off þe Romans . . . be ganne to fall doune, &c.] n his opening speech to the Parliament of 1402, Bishop Stafford, the Chancellor, gave a different theory of the decline of the Roman power. 'Et monstra outre mesme le Chanceller, coment pur importune et insaciable Covetise et Averice des Communes, et auxint des autres grandz, la Cite de Rome feust destrute' (Rot. Parl. iii. 485 a). Much the same theory is put forward as a warning to England by the author of the satirical verses on Bishop Boothe:—

> 'These were the same that Rome overthrewe;
> Wittenes of writing alle this is trewe.'
> (Political Songs, ii. 227.)

In the earlier form into which Fortescue cast his thoughts on these subjects, he speaks of the civil wars of Rome, and compares them to those which had desolated England, tracing both to the influence of 'private counselloures' (App. A). But perhaps such a reference was avoided as ill-omened after Fortescue's reconciliation with Edward IV. Aquinas also speaks of the civil wars of the Romans; *De Regimine*, i. c. 4. And Ægidius (III. ii. 15) attributes their origin to the cessation of external wars. See the passage quoted in Introduction, Part I, above, p. 7, *note*.

nowe the lordeshippes off þe emperour, &c.] We see here Fortescue's unquestioning belief in the unbroken continuity of the Roman Empire, on which see Professor Bryce's admirable Essay on the Holy Roman Empire. The Emperor at this time was Frederick III, who was in truth a very sorry representative of the great Julius.

be wich ensample, &c.] This is very pretty logic. But a writer who has a theory to maintain cannot afford to be hampered by such considerations as the possibility of a plurality of causes.

to subdue . . . all . . . that he shall liste to reygne uppon.] Cp. Cade's Proclamation: 'Thes defawtes thus dewly remedyd . . . owr sovereyn lord . . . shall have so gret love of his people that he shall . . . conqwere where he wyll' (Three Chron. pp. 98–9). In the 'Declaration upon Certayn Wrytinges' which was written between 1471 and 1473, and by which Fortescue earned the reversal of his attainder in the latter year, he

says: 'O howe good lorde is Godde to the Kynge oure Souerayne lorde that now hathe yeven him thies bothe titles wherethorow his subgettes may fight for hym in his title for his roialme of Fraunce with oute any doute or scrople of counscience;' a passage which seems clearly to have been penned with a view to Edward IV's proposed expedition to France, which seems to have been broached to Parliament in 1472 (Rot. Parl. vi. 4 a) but did not take place till 1475, though it had been planned in 1468, before Edward's expulsion from England (ib. v. 622–3), and was expected in France both in 1466 and in 1470 (Commynes, ed. Lenglet Dufresnoy, ii. 57, 83). It is possible that the passage under consideration has a similar reference. If so, it forms an additional proof that this chapter in its present form was written after the restoration of Edward IV.

French expedition of Edward IV.

and in especiall þe cronycles, &c.] I have not yet discovered from what source Fortescue derived his knowledge of the past history and then condition of Athens and Sparta.

CHAPTER XVII.

On the whole of this chapter see App. B. §§ 4 and 6.

Offices in the gift of the Crown.

With regard to offices in the gift of the Crown and of the great officers of the Crown, the commons in 1406 successfully insisted that they should henceforth be granted not for term of life or years, but only at the king's pleasure (Rot. Parl. iii. 587, 589 a). This policy, if it was ever carried out, seems to have been formally reversed by the council on the accession of Henry VI, for we find an Order in Council of Jan. 28, 1423, that all persons who had grants of offices from the late king during good behaviour were to have those grants confirmed to them as for term of life ('acsi habuissent statum ad terminum vitæ in officiis predictis'); unless they were notoriously inefficient and undeserving (P. P. C. iii. 23).

Henry IV concentrates the great offices in his own family.

Henry IV seems to have concentrated the great offices as much as possible in the hands of his own family, partly perhaps because he could rely better on the fidelity of those whose fortunes were necessarily bound up with his own; partly perhaps because they could be kept waiting for their salaries with less danger than other great nobles, such as the Percies; for we know that im-

pecuniousness was the chief 'note' of the first Lancastrian reign (cf. Introduction, Part I, pp. 5–6, above). Thus Henry, Prince of Wales, besides his special employment in the field and in the council, as lieutenant of the king in Wales, &c., was Warden of the Cinque Ports and Constable of Dover Castle, and Captain of Calais in succession to his uncle Somerset (Cal. Rot. Pat. p. 254 b; Rymer, viii. 629; cf. P. P. C. ii. 4). Thomas, the king's second son, was Steward or Seneschal of England, Lieutenant of Ireland and of Aquitaine, and Captain of Guisnes (Cal. Rot. Pat. pp. 243 b, 246 b; Rymer, viii. 758; P. P. C. i. 340). John, the third son, was Constable of England, Warden of the East March, and Keeper of the King's Falcons (Cal. Rot. Pat. pp. 247 a, 250 a, 245 b). Humphrey, the fourth son, does not seem to have held any office, he was probably too young. Somerset, the king's half-brother, was Chamberlain of England and Captain of Calais (ib. 237 a, 239 a; P. P. C. ii. 4); while Thomas Beaufort, another half-brother, was Admiral of the North and West, of Ireland, Aquitaine, and Picardy, and, for a time, Chancellor (Cal. Rot. Pat. pp. 255 b, 256 b). During the minority of Henry VI it was agreed that all foresters, parkers, and warreners should be appointed by the Protector, who was also to present to all livings in the gift of the Crown the annual value of which was between 20 and 30 marks, and to all prebends in the royal chapels except the deaneries; these last and the benefices above 30 marks, and all other offices, were to be given by the Protector and council (Rot. Parl. iv. 175. The king resumed the power of appointing to benefices and offices in Nov. 1437; ib. v. 439). Exactly the same regulations were made for the two protectorships of York in 1454 and 1455 (ib. v. 243 b, 289 a).

Mode of appointment during Henry VI's minority.

Just as the places at the council board were almost exclusively occupied by the great lords, so almost all the great offices were monopolized by them. The aristocratic principle of appointing to offices is expressly laid down in the Proceedings of the Privy Council for 1436: 'To advertise þe K' þat he yeve offices to suche persones as þoffices were convenient to, not to hieghe estat a smal office, neþer to lowe estat a grete office' (v. 3). As illustrations of the way in which offices were accumulated by great personages I will give two instances: Gloucester under Henry VI, and Warwick under Edward IV. Gloucester was Chamberlain of England, Constable of Gloucester

Monopoly of offices by the great lords.

Gloucester.

Castle, Justice of Chester and of North and South Wales, Constable of Dover Castle and Warden of the Cinque Ports, Justice, Chamberlain, and Custos of all Forests South of Trent, Captain of Guisnes, and Captain of Calais (Cal. Rot. Pat. pp. 269 a, b, 283 a; P. P. C. iii. 69, 77, 267; v. 138; vi. 25; Rot. Parl. iv. 174, 483 a).

Warwick. Warwick under Edward IV was Steward or Seneschal of England, Great Chamberlain of England, Constable of Dover Castle and Warden of the Cinque Ports; Custos, Justiciar, and Justice in Eyre of all Forests South of Trent; Warden of the East and West Marches, Chief Justice of South Wales, Constable of Cardigan Castle, and Steward of the Courts of Cardigan and Carmarthen; Admiral, Captain of Calais, and Lieutenant of Ireland; Seneschal of the Manor, Master Forester, and Keeper of the Park of Ffekenham; Master of the King's Mutes and Falcons, with the Manor called the 'Mewehouse' near Charing (Cal. Rot. Pat. pp. 300 a, 312 a; Hearne's Fragment, pp. 299 f.; Rymer, xi. 475, 488, 641, 647; Rymer's MS. Collectanea, Edw. IV, Vol. I. Nos. 15, 16). These lists are probably incomplete. But at least they are sufficient to show what an immense reduction in the power of the great lords would have been effected if the rule which Fortescue lays down at the end of this chapter had been adopted: 'þat no man haue mo offices then on.' On the way in which great men engrossed offices in order to distribute them to their followers, see a later note, pp. 334–7. On the offices connected with the administration of Calais, see notes to Chap. vi. p. 229, above.

ther shall be lityll nede to gyff hem moch off his livelod.] Cf. Chap. v. above. A list of the offices which the king in Edward III's time had at his disposal for rewarding his household servants is given in the *Liber Niger* (Ordinances, &c. p. 19): 'This king appoynted of offices outward to rewarde his household services after theyre desertes to be parkers, some foresters, waryners, kepers of manors, baylywicks, constableshippes, portershippes, receivours, corrodyes, wardes, marriages, and many other thinges of value, in portes and townes, citees, &c. and for his chapelmen, chyrches, prebendes, free chapelles, and pensions, &c. when any suche fell in his gifte, or elles by his lettres of contemplation, to gette suche benyfece of any other lord for his household-man.'

when he liste to call thaym.] For writs summoning the king's 'fee'd men' cf. Rymer, ix. 355: 'Rex vicecomitibus, &c.

. . . Præcipimus vobis . . . quod omnes et singuli milites, armigeri, et valetti, qui aliqua feoda sive annuitates de Nobis . . . habent . . . sub forisfacturâ eorumdem, sint . . . apud Villam nostram Suthamptoniæ,' &c.: cf. ib. 216; Camden, Misc. i. Rebellion in Lincolnshire, p. 25; Paston Letters, i. 157; ii. 145, 406: 'The Kynge hathe sent for hys ffeeodmen to koom to hym.'

Military force furnished by the royal forests.

Some fforester off þe kynges, &c.] On the appointment of foresters, parkers, and warreners, see above, p. 327. On the military power which, as Fortescue remarks, the royal forests were capable of furnishing, compare an interesting passage from Mr. Brewer's Henry VIII: 'The king had at his own immediate disposal the stewardships of forests, manors, chaces, castles, fisheries, and mines; the collectorships of customs in various ports. . . . The forests and chaces maintained a numerous and hardy race of men, trained to arms, and ready for the king's service at any time he should deem fit to employ them. They formed a standing army without its obnoxious features. . . . No minister dispenses or even shares the patronage of the crown; he may recommend, but evidently that recommendation is confined within the narrow circle of those who are already known to the sovereign. . . . All this has changed the King's position, and vastly augmented his power' (i. 70–2). *i. e.* in Henry the VIII's time the system which Fortescue wished to see established of direct appointment to all offices by the Crown had become a reality. Mr. Brewer's words also illustrate the remark of Fortescue a little lower down: 'the kynge givyth mo than M^li^ offices.' We hear of 'a ridership within the Forest of Delamare . . . with iii. d. by day for wagez' (Rot. Parl. v. 192 a), and of a 'raungership within oure Forest of Westbere . . . with the wages of ii.d. by the day' (ib. 594 b); and of 'iiii. d. by day, for . . . fees and wages of exercising th' office of keper of oure Forest or Chace of Boryngwode' (ib. vi. 94 a).

Appointment to Crown offices under Henry VIII.

some knyght or squyer, &c.] In the *Liber Niger* the income of a knight is set down at £200, that of an esquire (armiger) at £50 per annum (Ordinances, &c. pp. 34, 46). And on the knights and squires of England as a class, cf. S. C. H. iii. 544–9.

Stewards of great lordships.

Stewardes off gret lordeshippes.] For a list of some of the 'gret lordeshippes' in the hands of the Crown, see S. C. H. iii. 512. We find a steward and receiver-general of the Duchy of Cornwall (P. P. C. iii. 24); a steward of the liberty of Ulster in Ireland (ib. 229), &c. In 1402 an ordinance was made that 'no Welshman

should be Justice, Chamberlain, Chancellor, Steward, Receiver, Master Forester, Sheriff, Escheator, Constable of a Castle or Keeper of the Rolls or Records in Wales' (Rymer, viii. 184; cf. P. P. C. i. 149). See also next note but one. It was a dispute about the stewardship of the Duchy of Cornwall which caused the private war between the Earl of Devonshire and Sir William Bonville (P. P. C. v. 165, 173–5).

Receivers.

Reseyvors.] 'Receptor Cornubiæ' (P. P. C. ii. 291); 'Receptor generalis ducatus Lancastrie' (ib. iii. 51); Receiver of the Honour of Tutbury' (ib. ii. 171). The receivers seem to have discharged in these great lordships much the same financial functions that the sheriffs did in the counties, collecting the revenues due to the Crown, and paying the various sums with which those revenues were charged (cf. ib. i. 277–8). See also last note. In the case of Wales and Chester the corresponding officers seem to have been the Chamberlains (cf. Ordinances, &c. p. 31*; P. P. C. iv. 199 f).

Constables of Castles.

Constables of Castels.] These were of course very numerous. We have seen how Gloucester and Warwick in turn were Constables of Dover Castle. In one page of the Proceedings of the Privy Council (i. 211) we have five constables of castles mentioned. For an interesting entry with reference to the constableship and stewardship of the castle and lordship of Chirk, see notes to Chap. x. p. 274, above. Under Nov. 21, 1436, we read: 'Md þat Conestables in Wales goo hom to þeire offices' (ib. v. 3). See also last note but one.

maystir fforesters.] See the last note but two. We hear of a chief forester of Snowdon (P. P. C. ii. 65). On the position of the master forester under the Norman kings, see S. C. H. i. 403.

Justices off fforestes.] We have seen this office held by men like Gloucester and Warwick. (See first note of this Chapter.)

Justices and Chambirlayns off Contries.] We find Chamberlains of North Wales, South Wales, and Chester appointed (P. P. C. iii. 4, et sæpe); and we have seen that Gloucester was Justice of all those three 'countries.' Strictly however these offices would come under the head of 'tho þat my lorde þe prince geuyth.' Cf. ib. ii. 65, where we have a table of 'the wages and fees of the Justice, Chamberlain, Constables and other ministers of the Prince within the parts of North Wales.' In Nov. 1436, after the memorandum quoted above that all the Constables in Wales were to go

Justices and Chamberlains of Wales and Chester.

home to their offices comes the following note: 'The Chambreleins to be at hom' (ib. v. 3). See last note but three.

þe warden off þe portes.] *i.e.* the Cinque Ports. The Cinque Ports held their liberties by furnishing a certain number of ships to the King's service, and the Warden of the Ports was responsible for seeing that these ships were forthcoming when required; and to him the writs were addressed which summoned the Cinque Ports to discharge their obligations (*e.g.* Rymer, ix. 339, 384; cf. S. C. H. i. 593; ii. 289). The constableship of Dover Castle seems always to have gone along with this office, as it still does. In 29 Hen. VI these offices were granted to Humphrey Duke of Buckingham, *and his heirs male* (Cal. Rot. Pat. p. 294 b). Warden of the Cinque Ports.

be sydes tho þat my lorde þe prince geuyth.] *i.e.* as Prince of Wales, Duke of Cornwall, and Earl of Chester. We have already made acquaintance with some of these officers, such as the Justices and the Chamberlains of North and South Wales, Chester, etc. And I have already alluded to the list of the officers of the Prince for North Wales contained in P. P. C. ii. 65. The list comprises Justice, Chamberlain, Sheriffs, Escheators, Constables, Sergeant, etc. We hear also of the Exchequer of Carnarvon, and of that of Chester (P. P. C. iii. 199; iv. 50). It is to be noted that during the whole of Richard II's reign, almost the whole of Henry V's, two-thirds of Henry VI's, and half of Edward IV's reign there was no heir apparent to the Crown, so that these lordships were *de jure* in the hands of the King, while during the remainder of Henry V's, Henry VI's, and Edward IV's reigns, they must have been practically in his hands, owing to the youth of the prince; so that Fortescue is justified in 'reckoning' the prince's 'officers as the king's officers.' Accordingly we find in 1425 a petition to the King for the grant of an advowson, 'q'est de vostre Patronage come de vostre Principalte de Gales' (Rot. Parl. iv. 311 b). And so the Commons under Robin of Redesdale, in their manifesto of 1469, reckon the revenues of Wales, Cornwall, and Chester among those which Edward IV had enjoyed and wasted (Warkworth, p. 48; cf. the accounts for the year 1433 quoted in the notes to Chap. vi. above, p. 213, and Issues of the Exchequer, pp. 402, 427). Thus the only reign of our period during which these lordships were really governed by the prince was that of Henry IV. We find Prince Henry appointing to the office of 'raglore' (=Welsh rhaglaw, *i.e.* deputy or lieutenant) in Offices in the gift of the Prince. The Prince's appanages in the hands of the Crown.

the 'Commotes of Generglyn and Hannynyok' (Rymer, viii. 547). But apparently the appointment required the confirmation of the Crown, for the document is endorsed 'fiat inde Warrantum pro Confirmatione Regis.' With reference to the minority of Prince Edward of Lancaster special provisions were made in the Parliament of 1455. The Prince and his attendants were to be 'at diettez' in the King's household till he was fourteen years of age, the King receiving the net revenues of the Principality, Duchy, and County, and paying to the Prince a fixed allowance. The balance remaining in the King's hands was to be applied to the expenses of the royal household (Rot. Parl. v. 293). In an order 'for the Creation of a Prince' (temp. Hen. VII, Ordinances, etc. p. 128) it is said: 'first the King to putt on the sworde . . . because hee is Duke of Cornewall as soone as hee is borne; and then the King to sett the cappe with the coronell on his head, etc. . . . Because hee is Duke without creation the sword is first sett on him; the imposition of the cappe of estate and coronell is for the creation of the Prince.' This distinction holds good as far as I have observed. The heir apparent is always *created* Prince of Wales and Earl of Chester; he is considered as being Duke of Cornwall from his birth (cf. *e.g.* Rot. Parl. v. 293 a). The only exception is in the case of Henry, the eldest son of Henry IV, who, not having been born in the purple, was created Prince of Wales, Duke of Cornwall, and Earl of Chester in the same Parliament in which his father was acknowledged King (ib. iii. 426; cf. ib. 667 f., from which it appears that the Duchy of Cornwall had estates in twenty-three counties, besides the city of London). Henry VI seems never to have been created Prince of Wales during the nine months that his father survived his birth; perhaps because no Parliament was summoned after that event, though one was sitting at the time that he was born. Prince Edward of Lancaster, who was born October 13, 1453, was created Prince of Wales and Earl of Chester in the Parliament of 1454 during the first incapacity of his father, and this was confirmed formally in the Parliament of 1455, during the second incapacity of Henry VI (Rot. Parl. v. 249, 290 ff., 356 ff.; cf. Cal. Rot. Pat. p. 296 b). On the agreement with the Duke of York in 1460, Wales, Chester, and Cornwall were transferred to him as being now the recognised heir apparent (Rot. Parl. v. 380). The creation of Edward IV's son as Prince of Wales and Earl of Chester is in Rot. Parl. vi. 9 ff. The right of the heir apparent to

Special arrangements for Prince Edward of Lancaster.

Difference between the Duchy and the Earldom.

These appanages transferred to the Duke of York.

the Duchy of Cornwall rested on the grant made by Edward III in Parliament in the eleventh year of his reign (cited Rot. Parl. iii. 526; Rymer, viii. 148); his right to the County Palatine of Chester rested on St. 21 Ric. II. c. 9). In 1404 the Commons prayed that all alienations made from the Duchy might be revoked (Rot. Parl. iii. 526). The Prince had a council to assist him in his government. In 1401, with reference to a petition of the Commons relating to Wales, the King promised 'qu'il voet charger son Conseil, ensemblement ove le Conseil Monsieur le Prince pur l'interesse qu'il ad celle partie,' to attend to the matter (ib. 457 a). This was especially necessary when the Prince was of tender age. In 1457 Henry VI appointed a council of eleven persons for his son (Rymer, xi. 385). So Edward IV appointed a council for his son, of which the Bishop of Rochester was president, while Earl Rivers was governour of the Prince's household (Cal. Rot. Pat. pp. 316a, 317, 318a). The rules for the government of the Prince's household, addressed to these two lords, are in Ordinances, etc. pp. 27*–31*. For the early history of the County Palatine of Chester, v. S. C. H. i. 363–4; ii. 46–7. And on the administrative confusion which these 'imperia in imperio' caused at a later time, cf. Burke, On the Economical Reform. Council of the Prince.

some mey dispende.] *i.e.* some have an income; cf. sup., Chap. x. p. 264.

a parker takynge but ijd. on a day.] In Rot. Parl. v. 536 b is mentioned 'the Parkership . . . of oure Parke of Hadlegh (Essex) . . . with the fee and wages therto belongyng: That is to say, iii.d. by the day.' Parkerships were sometimes however held by the great lords: thus in 1459 the king grants to Edmund Bolton the parkership of Raskell (Yorks.) recently forfeited by Richard, Earl of Salisbury (Rymer, xi. 437); parkerships in North Wales are granted to Owen Tudor (ib. 439). In both cases the offices are to be exercised by the grantees or a sufficient deputy. Sir Philip Courtenay was surveyor of parks in Cornwall, and Lord Cromwell was surveyor of Lyfeld Forest (Rutland), with a 'looge' (lodge) there for himself or his deputy (P. P. C. iv. 284; v. 143). This illustrates what Fortescue says at the end of this Chapter, that 'suche men as serue þe kyng abouute his person or in his counsell mowe haue in þer contray a parkershippe ffor þer disporte when thay come whom, (home,) or such an oþer office as thai mey wele kepe by þer deputes.' The Parkers.

Offices performed by deputy.

system of executing offices by deputy was in the middle ages carried to an extent very prejudicial to the public service, and was to a great extent the result of that pernicious accumulation of offices in a few hands, which has been already animadverted upon. Some attempts to check this evil were made during our period. In the first Parliament of Henry IV, the Commons complained that the king lost 10,000 marks yearly through the non-residence of the collectors and controllers of customs at the ports, who discharged their offices by insufficient deputies, and a statute was made obliging them to reside under a penalty of £100 (Rot. Parl. iii. 439 b; St. 1 Hen. IV. c. 13). But fresh complaints were made in 1402, and a fresh statute was enacted on the subject (Rot. Parl. iii. 506 b; St. 4 Hen. IV. c. 20). So in 1406 it was ordered that these officers should occupy their offices in person 'sans depute ou substitut faire' (Rot. Parl. iii. 587 a). These statutes were, on petition, confirmed in 1411 (ib. 665 a; St. 13 Hen. IV. c. 5). In 1433 the treasurer was ordered to appoint no one to these offices except such as were willing to reside personally (P. P. C. iv. 175).

Attempts to check the system.

iij. ℔. x.d.] The first edition has 'xl. s. x.d.,' which is an obvious misprint for 'lx. s. x.d.' the reading of D^2, the MS. on which the first edition was based. Lord Clermont not only tranquilly follows suit, regardless of arithmetic, but prints in full 'forty shillings and tenpence.' Three hundred and sixty-five days at two-pence per diem are exactly 'lx.s. x.d.,' or 'iij. ℔. x.d.'

a c.s. off fee or rente wich is a feyre lyuynge ffor a yoman.] On the yeoman class in England during the middle ages, see S. C. H. iii. 551–8.

nor ij the gretteste lordes, &c.] This is for Fortescue a great point gained towards establishing the security and independence of the Crown, at a time when the government of the day was so liable to be overborne by a combination of a few of the greater vassals in arms. Compare the requirement laid down in Chap. ix. above, on 'the perellis that mey come to the kyng by ouer myghtye subgettes,' that the kyng should have for his extraordinary charges revenues 'gretter than the livelod off the grettest lorde in Englande' (or 'ij the grettest lordes' according to MS. D^2); cf. also Chap. x. p. 133, above.

To this sane suche lordes, &c.] The advice which Fortescue gives in this Chapter, that all offices in the gift of

the Crown should be given directly by the Crown, would have highly commended itself to George III. Cp. the reply of Bute to Anson, 'What, my Lord, the King's Admiralty boroughs full, and the King not acquainted with it!' (cited in Mahon's England, iv. 215). But it is one thing to resist the distribution of offices by unauthorized persons, which is what Fortescue recommends, and another to impede their distribution through established constitutional channels, which is what George III attempted. Even in the fifteenth century however there were certain offices, the appointment to which was either by custom or statute vested in the hands of certain ministers. Thus the revenue officers were by St. 17 Ric. II. c. 5, 1 Hen. IV. c. 13, appointed by the treasurer with advice of the council, and then as now, the chancellor presented to certain of the crown livings (cf. Rot. Parl. iii. 587 a; P. P. C. iii. 16; iv. 175). Offices and benefices of less than £5 per ann. or 2d. per diem within the Duchy of Lancaster were in the gift of the Chancellor of the Duchy (ib. 105). Certain offices again were in the gift of the Marshal of England (Rymer, viii. 115). But all these offices, whether given immediately by the Crown, or mediately through the intervention of some great official, were made the subject of that ignoble traffic which Fortescue here describes. The object of the great men was, as he says, to engross all the offices in their districts which were in the gift of the Crown, and to intimidate those who received any office direct from the king, so that they might be the only agents or, as Fortescue terms it, 'brokers' of royal patronage in their districts, and so to make the offices of the Crown subservient to their own local influence, by distributing them to their own adherents, or to persons who could in those offices advance their interests. It was one of the charges against Suffolk in 1450 that he had made his own partizans sheriffs, so 'that they that wold not be of his affinite in their contreys were oversette, and every mater true or fals that he favoured was furthered and spedde' (Rot. Parl. v. 181 b; cf. Warkworth, pp. 47–8). And thus, as Fortescue complains, the patronage of the Crown was used to undermine the influence of the Crown, and increase that of its most dangerous rivals. And just as the great lords acted as brokers of royal patronage, so lesser men in turn acted as brokers of the favours of the great lords, and so on ad infinitum. Thus John Russe, hearing that Lord Worcester was likely to be treasurer,

Offices in the gift of certain ministers.

Royal patronage engrossed by the great lords.

'with whom I truste ye stonde right wel in conseit,' writes to suggest that John Paston should 'desyre the nomynacion . . . eythyr of the countroller or serchorship of Jernemuth (Yarmouth), for a servant of yowrez' (*i.e.* himself), 'and yeerly as longe as I myght have the officez . . . I shal geve my maister youre sone v. marke toward an haukeney.' In another letter he runs down his competitor as 'an evyl disposyd man alwey ayens you,' but his 'supportors is Blakeney, clerk of the sygnet, and Avery Cornburght, yoman of the kynges chaumbre' (Paston Letters, ii. 96–7, 107). During the restoration of Henry VI, John Paston the younger writes to his mother, 'I tryst we shall be sped of . . . ofyseys metly for us, for my mastyr the Erle of Oxynforthe bydeth me axe and have' (ib. 412). There is a curious passage in the *Liber Niger* where the author enumerates the means which Dukes and Marquesses have of rewarding their servants (Ordinances, &c., p. 27): 'These lordes rewarde theire knyghts, chapeleyns, esquiers, yomen, and other of theyre servaunts, after theyre deserts. Some of his chapleyns with officyalshippes, deaneries, prebendes, freechapels, parsonages, pensions, or suche other; and for the seculer men, stewardshippes, receivours, counstables, portershippes, baylywikes, wardenshippes, forresters, raungers, verders, vergers, shreves, eschetours, corouners, custumers, countrollers, serchers, surveyours, beryngs of yeres-gifts, wards, marriages, corrodies, parkers, and warenners. And this causeth lordes to rule at neede.' Some of these offices are no doubt offices on the lord's own estates or in his gift, but it is plain that many of them are crown offices, and merely given by the lord's influence. If the charges against Somerset contain any truth, great lords were sometimes not above jobbing for money the posts which they had to dispose of (Paston Letters, I. lxxvii). A similar charge had been made against Cardinal Beaufort by Gloucester in 1440 (English in France, ii. 450), and against Suffolk in 1450 (Rot. Parl. v. 180 a). Various attempts were made to check this evil. In 1386 a commission was issued to enquire into 'officers et ministres faitz par brogage et de leur brogours' (P. P. C. i. 5). In the first Parliament of Henry IV the Commons complained that 'Justices de Pees . . . sont faitz par brocage' (Rot. Parl., iii. 444 a). In the rules laid down for the guidance of the council in 1406 it was ordered that offices should be filled up in accordance with the statutes, 'et nemy

Offices disposed of by great lords.

Attempts to check the evil.

par mediation et instance a part' (ib. 586 a). In 1410 the Commons declared that the decrease in the amount of the customs was largely due to the fact, that the revenue officers 'sovent ont este faitz par brocage' (ib. 625 b). And so in this way 'brokage' came to be simply a euphemism for corrupt influence or bribery, as when it is ordered that no great officer or other person about the king is to be 'si hardy de prendre de nully des liges nostre sieur le Roy Brogage, Presantes, ne Dounes quelconques' (ib. 433 b; cf. ib. 537 a, 626 b 'doune ou brocage,' 637 a; iv. 11 a, 23 a, etc.). Brokage.

Nemo potest, &c.] Matth. vi. 24.

but he be ffirst sworne, &c.] See notes to Chap. xv. pp. 299, 310, above, for the similar oath to be taken by councillors and judges. So Henry V confirms the grant of an annuity made by his father to Nicholas Merbury, on condition that he is not to be retained in the service of any one except the king (Rymer, ix. 25–6). Henry VI grants certain manors to John, bastard of Clarence, on a like condition (ib. x. 406). The Duke of York, as Protector, was empowered by the council 'to geve the king's liverey of colers to iiij^{xx} gentillmen after his discretion, they and everich of thaim to be sworn to be afeed with no man but with the king withoute his speciall licence' (P. P. C. vi. 209). Cp. Henry VIII's saying, 'that he would none of his seruauntes should hang on another manne's sleue' (Hall, p. 599; cited by Brewer, Henry VIII, i. 344).

CHAPTER XVIII.

corodie nor pencion, &c.] Corrodium = conredium; originally the right of free quarters due from the vassal to the lord on his circuit; but later applied especially to certain contributions of food, provisions, etc., paid annually by religious houses, either of right, as here, to persons nominated by the representative of the original founder; or out of policy, to conciliate great men and their followers; or as a matter of bargain and sale. Sometimes the contribution might be commuted, and then it would be practically undistinguishable from an annuity or pension; and corrody and pension are accordingly sometimes used as convertible terms Corrodies.

Defined by Fortescue.

(*e.g.* Rot. Parl. v. 273 a). Fortescue himself gives a definition of corrody in the stricter sense in his legal judgments: 'Si un ad un corody deins un Meason de Religion, scavoir, d'aver certeines messes de chair, pain, servois, fuel, chambre, et un estable pur ses chevals' (p. 36). This definition agrees well enough with the description of an actual corrody confirmed by the Abbey of St. Alban's in 1468: 'quoddam corrodium panis, cervisiæ, carnium, piscium, et hujusmodi, cum quadam mansione et gardino, cum suis pertinentiis' (Whethamstede, ii. 80; cf. S. C. H. iii. 531).

In the gift of the Crown.

The right of the Crown to appoint to corrodies and pensions in religious houses which were royal foundations, probably rested on special customs in each particular case. Thus at Croyland, on the installation of a new abbot, one of the king's clerks had to be provided with a corrody of 40*s.* per ann.: 'donec sibi de beneficio competenti alias poterit provideri' (Cont. Croyl. p. 513). A similar rule existed at St. Alban's, though the value of the pension is not stated (Whethamstede, ii. 340).

Given to the King's servants.

As far as I have observed, these corrodies and pensions were generally given, as Fortescue recommends, to servants and officers of the Crown. Thus a pension out of Selby (Yorks.) is granted to a clerk of the Exchequer, one out of Southwick (Hants) to a clerk in the Privy Seal Office, and a corrody in Malmesbury to a yeoman of the cellar (P. P. C. iii. 25, 152; iv. 67). The reversion of an annuity of fifty marks from St. Augustine's, Canterbury, is granted to the king's physician (Rymer, xi. 416. It appears from this document, that the annuity in question was a commutation for the sum originally payable by the convent on each vacancy in the Abbacy). Several corrodies are mentioned in Rot. Parl. v. 473 b. The holders, where their condition is given, are ecclesiastical members of the royal household, one being 'John Plummer, Clerk of oure honorable Chapell.'

Exemption from payment of corrodies.

Exemption from the payment of corrodies, pensions, etc., was sometimes granted to religious houses as a favour: *e.g.* to Eton; to the hospital of 'St. Thomas the Martir of Acres,' originally founded by Agnes, the sister of St. Thomas, and her husband, on land that formerly belonged to 'Gilbert Bekkettis,' the father of St. Thomas; and in the same way the Abbey of Bermondsey was exempted from 'any Corrodie or Sustentation, to be graunted at the prayour, desire, denomination or writyng of the kyng, or of any of his heires kynges of Englond hereafter' (Bekynton's Correspondence, ii. 284; Rot. Parl. v. 74 f; vi. 124 b). These exemptions were among the

grants, the resumption of which was demanded by the Commons in 1450 and 1455 (ib. v. 184 a, 301 b). Edward IV, in 1461, refused to annul the grants of corrodies which had been made on the recommendation of the Lancastrian kings (ib. 492 a). Religious houses that were not royal foundations owed similar dues to the representatives of their founders; and it is a subject of repeated complaint in Parliament that such houses, by representing themselves falsely as royal foundations, obtained letters of protection, whereby they evaded payment of the annuities, pensions, and corrodies which they owed to various persons, and for which in some cases they had received payment (ib. iii. 469 b, 520 a; iv. 104 a). The sale of corrodies is further illustrated by the accounts of St. Alban's. In two instances the accountant manifests great glee, because estates were made over to the monastery in return for grants of corrodies, and then the grantees only survived the transaction two or three years (Amundesham, ii. 265). Sometimes the revenues of a monastery were so dilapidated by these grants that they had to apply to the king in Parliament for relief (Rot. Parl. v. 206). One of the points which the Abbot of St. Alban's inquired into in visiting the cells of the monastery in 1425–6, was whether there had been any sale of corrodies, or alienation of revenues, without the licence of the Abbot and Convent (Amundesham, i. 208). Another right which the king had in connexion with certain religious houses, was that of nominating a fit person to be admitted as a nun at the time of his coronation. Nominations of this kind to Shaftesbury, Wilton, and Barking, occur, Rymer, ix. 11; x. 438, 445, 448.

Exemptions obtained under false pretences.

Other royal rights.

þe clarkes off is chapell þat haue wyfes, &c.] *i. e.* lay clerks or singing men. Cf. *Liber Niger* (Ordinances, &c., p. 50): 'Chapleynes and Clerkes of the Chapell, xxvi., by the King's choyce, or by the deane his election or denomination, of men of worshipp, endowed with vertuuse, morall, and speculatiff, as of theyre musike, shewing in descant clene voysed, well releesed and pronouncynge, eloquent in reding, sufficiaunt in organes pleyyng, and modestiall in all other manner of behaving. . . . The King's grace avaunceth these preests and clerks by prebends, churches of his patrymony, or by his lettres recommendatory, free chappells, corrodies, hospitalles, or pensions. . . . The statutes of noble Edward the Third, appoynted the numbyr of six cunnyng preests, tyll they were advaunced, to take viid. ob. and all other gentylmen

Clerks of the Chapel Royal.

clerkes syngers, four pence half penny by the daye.' For instances of clerks in the royal service being advanced to benefices, cf. Ellis's Letters, III. i. 71, 75.

Benefices and offices in the King's gift to be given to his servants.

hurt of his said seruauntes, &c.] In the regulations of the council, drawn up in 1426 and 1430, it is ordered 'þat in benefices and offices longyng unto þe kinges disposicion . . . þoo þat hathe be servantes to þe kinges fadre, or his graunde sire or be to þe king þat nowe is, be preferred þerto;' and one of the versions adds: 'so þat þei have no cause to complaine as it is seide þei do daily for lak of ferþeryng,' which seems to show that the charges which Fortescue here makes were not unfounded (P. P. C. iii. 216; iv. 38, 62). One of the reasons urged upon the king in 1455 in favour of revoking all grants that might have been made of the right to present to offices, benefices, etc., was 'to th'entent that of such offices and othir the premisses it mowe please yow to rewarde your servauntes meniall' (Rot. Parl. v. 301 b). The grant of the hospital 'called the Mallardri,' outside Lincoln, to the 'ordre of Burton of Seint Lazar of Jerusalem in Englond . . . for to fynde and susteyne therof yerely for ever, certeyn Lepres of oure meniall servauntez, and of oure heires and successours, yf any such be founde' (ib. 472 a), is interesting as showing that this great scourge of the middle ages did not always spare king's houses. We find prebends granted to a clerk of the kitchen, and to the king's physician (Rymer, ix. 875; x. 263). Edward IV, in his will, directs that 'oure servants and such as were servants to my said Lord and Fader' should be preferred in the elections to the charitable foundation which he there establishes (Excerpta Hist. p. 374).

CHAPTER XIX.

hath gotyn ayen his lyuelod.] On acts of Resumption, see notes to Chap. xi. pp. 279–281, above.

as who sayth.] For the phrase cf. 'Arrival of King Edward IV,' p. 18: 'The Kyng and his hoste kept passinge greate silence alnyght, and made, as who saythe no noyse.' Cf. ib. 15.

amortyse.] *i.e.* To alien lands in mortmain: *i.e.* 'to any guild, corporation, or fraternity, and their successors, as bishops,

parsons, vicars, etc.' And 'of corporations some are *sole*, some aggregate: *sole*, when in one single person, as the king, a bishop, dean, etc.' Tomlins' Law Dictionary, ed. Granger, s. vv. Mortmain, Corporation.

so as it mey neuer be alyened.] With a view to realizing the much desired object that the King should 'live of his own' (see above, notes to Chap. viii. p. 250), there were two obvious measures which might be suggested, and which frequently were suggested by reformers during the middle ages. One was the resumption of the grants which had been made out of the royal revenues in the past; the other was the limitation of the King's power to alienate them in the future. On the former point something has already been said. So important was the latter point considered that it appears in one of the versions of the English Coronation Oath (S. C. H. ii. 105). Had the domains of the Crown remained what they were under the first three Norman kings it is possible that England might have found by dire experience what the constitutional result was of having kings who could 'live of their own.' But the process of dilapidation begun by Stephen was continued under kings like Henry III and Edward II, and this formed the subject of one of the charges exhibited against Richard II in the first Parliament of Henry IV (Rot. Parl. iii. 419 b; cf. S. C. H. ii. 329, 353, 554–6). Various measures were attempted during the present period with a view to making it less easy for the King to grant away the possessions of the Crown. In the first Parliament of Henry IV it was enacted that all who should in future petition the King for any grant were to state the exact value of the thing asked for, and also the value of any previous grants which they had received from the King or his predecessor (St. 1 Hen. IV. c. 6; Rot. Parl. iii. 433 a). This statute was somewhat relaxed in the next Parliament (St. 2 Hen. IV. c. 2; Rot. Parl. iii. 458 b); but at the same time the King was obliged to revoke all annuities granted out of the subsidy on wools (ib. 457 b. The subject of annuities provoked fresh remonstrances in the Parliament of 1404; ib. 423 b; 424 a). But these measures were of very slight efficacy. We constantly find grants made 'non obstante,' that the terms of the statutes have not been complied with in one point or another (*e.g.* P. P. C. ii. 305; Rymer, ix. 217; x. 583, 802; xi. 512, 529. In some grants however the rules are complied with, *e.g.* Rymer, x. 678). The measures taken in 1404 with reference to past grants

Attempts to limit the King's power of alienating his revenues.

These attempts ineffectual.

have been detailed in the notes to Chap. xi. pp. 279–280, above. With reference to the future, the Commons demanded that any officer who should execute any grant made out of the ancient inheritance of the Crown, should lose his office, forfeit everything that he could forfeit to the Crown, and be imprisoned for three years; and that any one who should accept such a grant, should forfeit that grant, and be imprisoned for three years (Rot. Parl. iii. 548 a; cf. Chap. vi. p. 120, above); while in 1406 it was ordered that no grant should be made out of any of the 'commodities of the realm' till the end of the next Parliament (ib. 587 a. The draft of this measure drawn up by the Council is in P. P. C. i. 285–6. In 1400 the Council had begged the King to keep all forfeitures in his own hands, since otherwise Parliament would have plausible grounds for refusing to grant an aid; ib. 108). In 1410 the King promised at the request of the Commons not to make grants of any escheats which might come into his hands, but to apply them to his household, etc. (Rot. Parl. iii. 625). In 1443 we find Somerset asking the King for 'a m^{l} marc of lande,' but the lords of the Council 'durst not avise the Kyng to depart from suche livelode ne to opon þeir mouthes in suche matiers;' finally, the King ordered the Chancellor to reply that he should have 'vj^{c} marc of land' (*i. e.* land of that annual value, P. P. C. v. 253). The way in which officers and courtiers thus obtained grants for themselves from the Crown is, as we have seen, one of the most constant themes of complaint in all the popular risings of the period (see notes to Chap. xiv. pp. 292–3, above). Edward IV seems to have learned the lesson: 'Jactavit omnem cogitatum suum, quomodo de propria substantia propriaque industria sua, thesauros Regio Statu dignos in futurum recolligat. Statuto igitur Parliamento, omne ferme patrimonium Regale, cuicunque ante collatum fuisset, ipse resumens, supportandis Coronæ oneribus id totum applicat' (Cont. Croyl. p. 559). In his will he charges his son Edward and his heirs not to alienate certain possessions from the Crown, 'as he and thay wil answere afore God at the day of Dome, and as thay love the wele of thaim silf and of the Reame' (Excerpta Hist. p. 377). It is curious that Fortescue, who is so fond of comparing English and French institutions, does not here allude to the inalienability of the domain of the French Crown.

as it is shewid be fore.] See above, Chap. vi, and the notes there, pp. 217–9.

this shalbe a collage.] The first edition reads by an absurd mistake *cotage*, which is however corrected by Lord Clermont.

antemes.] A poem, composed soon after the accession of Edward IV, concludes with the wish that 'Edward of Rouen' and his lords may be enabled

> 'To make peas in Engeland, that riche and pouer
> May joyfully synge at the conclusyon
> Welcom everlastyng joye, and farewal langoure.'
> (Political Songs, ii. 270.)

Compare also the curious address at the end of the Parliament of 1401, in which the Speaker compared Parliament to the Mass because, among other points, at the conclusion of the office was said 'Deo Gratias;' 'et q'ils et tout le Roialme, feurent especialment tenuz de dire cel parol, Deo gratias: . . . de ceo que Dieu de sa benigne grace leur avoit ottroiez un Roi gracious' (Rot. Parl. iii. 466).

I blissed be oure lord God . . . kyng Edward the iiijth, &c.] On the interesting historical and literary questions raised by the reading of MS. Y, which has 'Henry the vj^{the}' instead of 'Edward the iiijth,' see Introduction, Part III, pp. 87, 94–6, above. For the sentiment compare Capgrave, Chronicle, p. 4: 'We trew loveres of this lond desire this of oure Lord God, that al the erroure whech was browte in be Herry the Fourte may be redressed be Edward the Fourte. This is the desire of many good men here in erde, and, as I suppose, it is the desire of the everlasting hillis that dwelle above.' Cp. also Caxton's address to Edward IV at the end of his continuation of the Polychronicon (in Higden, viii. 587).

Hopes excited by the accession of Edward IV.

we shul now mowe enjoye . . . God knowith.] If this refers to Edward IV, we may compare the words of the Commons in Edward's first Parliament cited p. 202, above, notes to Chap. iv. And they continue: 'We hold for certayne and undoubted, that it wol please youre seid good grace, to preferre all thinges that may serve to the said commyn wele to the exercice of Justice and rightwisnes' (Rot. Parl. v. 463–4). And compare Edward's own words to the Parliament in 1468, where he contrasts his own reign with that of his predecessor: 'At that tyme this Londe was full naked and bareyn of Justice, the Peas not kepte, nor Lawes duely mynystred within the same; . . . and howe it was then, he reported hym unto theym, they understode it well ynowe, for it apperith at iye, and shewed it self, thanked be all myghty God' (ib. 622 b).

Lydgate expresses the hopes that Edward's accession gave rise to:—

> 'Edward the Fourth the old wronges to amend
> Is wele disposed in wille, and to defende
> His lond and peple in dede with kynne and myght;
> Good lyf and longe I pray to God hym send,
> And that Seynt George be with hym in his ryght.'
> (Gregory, p. 54.)

The author of a poem already quoted exhorts all people to pray for Edward,—

> 'That he kepe justice and make wedis clere.'
> (Political Songs, ii. 269.)

Edward at first really desirous to do justice to all.

Cf. Whethamstede's verses, ib. 263, 265; Hardyng, p. 412; Cont. Croyl. p. 533. That Edward was at the beginning of his reign sincerely anxious to improve the administration and do equal justice to all, seems to be proved by several indications in the Paston Letters. To Lord Essex, who spoke to the King on behalf of John Paston, he replied that 'he wold be your (*i. e.* Paston's) good Lord therein as he wold be to the porest man in Inglond. He wold hold with yowe in yowr rygth; and as for favor, he wyll nogth be understand that he schal schewe favor mor to one man then to anothyr, nowgth to on in Inglond' (ii. 40; cf. ib. 76, 95, 356–7). But in spite of his words in 1468, there can be no doubt that he disappointed the hopes that had been formed of him, and that it was this which made possible the restoration of Henry VI. Warkworth's testimony is decisive on this point. Speaking of the restoration, he says: 'Whereof alle his goode lovers were fulle gladde, and the more parte of peple. Nevere the lattere, before that, at he was putt oute of his reame by Kynge Edwarde, alle Englonde for the more partye hatyd hym, and were fulle gladde to have a chounge; . . . and alle bycause of his fals lordes, and nevere of hym; and the comon peple seyde, yf thei myghte have another Kynge, he schulde gett alle ageyne and amende alle manere of thynges that was amysse, and brynge the reame of Englond in grete prosperite and reste. Nevere the lattere, whenne Kynge Edwarde iiijth regnede, the peple looked after alle the forseide prosperytes and peece, but it came not' (Warkworth, pp. 11–2; cf. also Cont. Croyl. p. 554; Basin, ii. 221–2; S. C. H. iii. 205, 209, 273). It is therefore not by any means impossible that these words might refer to the restoration of Henry VI, if it should be decided that the reading of MS. Y represents a genuine tradition.

He disappointed the hopes formed of him.

and therfore God contenewe, &c.] (See Critical Notes.) If these words are genuine we may compare the words of the Commons in 1461, 'to whome (God) we bisech to contynue and prosper youre noble reigne longe uppon us youre true and lowly Subgetts, in honoure, joy and felicite' (Rot. Parl. v. 463 a).

CHAPTER XX.

land for terme of theyr lives . . . but . . . that the same land be no more gyven.] The Commons in 1399, while petitioning for a revocation of all grants of the possessions of the Crown made without the assent of Parliament, made an exception in favour of grants for term of life made to any one who 'pur son travaille duement disservy eit' (Rot. Parl. iii. 433 b). In 1402 the Commons petitioned that any grants which should escheat to the Crown might not be re-granted. The King promised that no such grants should be made, 'sinon a ceux que les deservont come meulx y semblera au Roy et son Counseill' (ib. 495 a). A similar request was made in 1404 (ib. 548 b). A petition for a grant of reversion of lands is in P. P. C. ii. 304–5. Grants for term of life.

shall nat serue hym but for giftes, as done offices, &c.] Cf. Rot. Parl. iii. 587 a: 'Offices, corrodes, benefices voidez de fait, ou autere chose ou profit que nostre dit Sieur le Roy ne puisse reteiner a soun oeps demesne.'

passed de auisamento consilii sui.] Here, as often, the reform proposed by Fortescue is merely a recurrence to what had formerly been the custom. 'During the reign of Richard II the commands of the King on the petitions submitted to him were generally said to be "with the advice of his Council"' (P. P. C., I. xxv; cf. ib. 77, 87, 89, etc.). In the Resumption Act of 1450 it was provided, that all re-grants of the lands, etc. so resumed should be void, 'but if it so be that thoose Letters Patentes passe by advyse and assent of youre Chaunceller, and youre Tresorer of Englond, Pryve Seall, and vi Lordes of youre grete Counseill for the tyme beyng; and that they and ich of theym subscribe in such Letters Patentes theire names: And that the seide letters Patentes so subscribed with the names, be enrolled in youre Chauncerie of record' (Rot. Parl. v. 218 a; cf. P. P. C., VI. cxciv, and the remarks Grants with the advice of the council.

of Sir Harris Nicolas there). This is the only regulation I have found requiring the advice of the Council to be stated in Patents of grants. It is frequently enacted that the advice of the Council shall be taken before any grant is made. Thus in 1390 we find the rule made 'que nul doun ou graunt que purra tournir a disencrees du profit du Roi passe saunz avys du Consail' (P. P. C. i. 18^{b}). In 1401 it was agreed that all grants of annual profits should only be made with the advice of the Council (Rot. Parl. iii. 479); and in 1406 that all warrants to the Chancellor, Treasurer, Privy Seal, and other officers should be endorsed or drawn up by the advice of the Council (ib. 572 b). Cf. also Appendix B, § 4 ad fin.

and namely for a yere or ij.] If this refers to the restoration of Henry VI, we may compare Appendix B, § 7, where Fortescue suggests a similarly temporary arrangement with reference to the royal household.

APPENDIX A.

This piece, which was printed by Lord Clermont (Works, pp. 475–6) from Stowe's transcript of it in MS. Harl. 542, is here given from the Yelverton MS. No. 35, from which Stowe copied it. It reads like an alternative version of Chapter xvi. of the *Monarchia*. It clearly refers to something which is supposed to have gone before, and cannot be an independent work.

Example what good counseill helpith and avantageth, and of the contrare what folowith. Secundum Sr. J. Ffortescu, Knighte.

'O what good welthe and prosperite shulde growe to the Reaume of Englande, yif suche a counsell be oones perfitely stablisshed, and the King guided therby. The Romaynes, whiche by wisdome and manhed gate the lordship and monarchie of the worlde, wer firste gouerned by kinges; but whenne thoo kingis throughe insolence, folowing thair passions, lafte the counsell of the Senate, the Romaynes roose uppon theyme, and put away their kinges for evermor. And thane thei wer re[u]led by the Senatours and by Consuls politikly many yeres. By whos wisdome thei gate the lordship of grete partie of the worlde. But after their grete welthe, by division that fille betwene the consuls for lakke of an hed, they hadde amonges them civile battailles, wherinne at somme oone debate were slayne and exiled of hemselfe more thanne iiij^{xx} M^{l}. And after that they wer governed by oon hed called an Emperour, whiche using in all his reule the counsell of the Senate, gate the monarchie of the worlde. So as at Cristis birthe themperour commaunded the hoole worlde to be discribed as subgiettes vnto hym. Whiche lordship and monarchie themperour kepte all the while thei were reuled bi the counsele of the Senate. But after that, whan themperour lafte the counseill of the Senate, and somme of theime [1],

[1] MS. inserts *had*.

as Nero, Dommacion, and other, had slayne grette partey of the Senatours, and were reuled by their privat counsellours, thastate of themperour fill in dekeye, and their lordship woxe alwey sythen lasse and lasse; so as now themperour is not of such mighte as is oone of the kinges whiche sumtyme were his subgiettes. We also Englishemen, whos kinges som tyme were counseled by sadde and wele chosen counseilloures, bete the mightieste kinges of the worlde. But sithen our kinges have been reuled by private Counselloures, suche as have offered their seruice and counseile and were not chosen therto, we haue not be able to kepe our owne lyvelode, nor to wiren hem that have take it from us. And that hathe bene mooste for pouertie and lak of good. But we haue had by that occasion ciuile werrys amonges us selfe, as had the Romaynes whenne thei had not oone hed but many governoures. And our Reaume is fallen thereby in dekeye and povertie, as was the Empire whanne themperour lafte the counsell of the Senate. But it may nat be doubted, that yif oure kinges be counseled by suche a wise stablisshed counseile as is before deuised, and do there after as did the firste emperour that gate the monarchie of the worlde, wee shulde firste haue unite and peax withinne oure lande, riches and prosperite, and be mightieste and moste welthe reaume of the worlde.'

APPENDIX B.

The occasion of the composition of the following piece has been discussed in the Introduction, Parts II. and III. (above, pp. 70, 89, 95). It has never been printed before, though a short extract from it is given in Ellis's Letters, II. i. 139, from Stowe's transcript, MS. Harl. 543. Nor has any one before recognised the author of it. It is here printed entire from the Yelverton MS. No. 35. In the margin of the sections I have placed a reference to the chapters of the present work, which they chiefly illustrate.

Here folowen in articles certeyne aduertisementes sente by my lorde prince to therle of Warrewic his fadir in lawe, for to be shewed and comuned by hym to king Henry his fader and his counseile, to thentente that the same aduertisementes, or suche of theyme as may be thoughte ex-

pediente for the good publique of the Reaume, mow be practised and put in use.

Tharticles sente fro the prince to therle of Warrewic fadir-in-lawe as folwith, an° M.CCCC. LXX°.

1. Firste, forasmoche as many of the lordes and other menne in lower estate, whiche in this tyme of the kinges grete trouble haue done hym good service to theire grete charges and costis, and other of his feithefull subgiettes, whiche for his sake and their trewe acquitaill have suffered grete harmes in theire persones, and loste of theire goodes, wol now sewe to his highenesse as wele for Rewardis, as for Recompense of their harmes, as Reason, liberalite, and namely Roiall Munificence wolde thei shulde so have; yet yif the king by suche consideracion geve to somme manne and not to another, whiche by lyke reason oughte to be rewarded, ther shall growe therof grete grugge amonges his peopull. And also somme man, with Importunite of Sute, and by parciall meanes, shal mowe obtayne gretter rewardis than thei have disserved, and yit grugge, seying they haue to litill. And somme menne for lakke of meanes toward his highenesse shulde haue to litill, or righte noughte. Hit is thoughte therfor good that alle suche Rewardes and Recompences be deferred, vnto the tyme that ther be a counseill stablisshed; and thanne the supplicacions of alle suche persones mow be sende by the kyng to the seide counseile, where as every man his merite[s] may be indifferently examyned. And thanne the counsele may firste consider, what lyvelod the king hath for the sustentacion of his estate, and how of the Remenaunte Distribucion may be made amonges suche as haue weele deserued, so as the king by reason of liberalite and rewardis amenisshe [not] nor lasse so his lyvelode, as be necessite he be compelled to lyve upon his Comunes and upon the Chirche, to his enfamye and the withdrawing from hym of the hertes of his subgiettes, whiche Gode wolde not. And thanne, whanne the king upon all such supplicacion is fully aduertised by his counseile, he may so rewarde euery man as he hathe deserued, and as the kinges lyvelode woll extende to hit. For yif this order be kepte, no man may grugge with the kinges highenesse nor with the lordis nor with any other manne aboute his personne as they were wonned to doo.

Cf. ch. xiv. pp. 143–4.

2. It is thoughte good that it shulde please the king testablysshe a counseill of Spirituel men xij, and of temporel men xij, of the mooste wise and indifferente that can be chosen in alle the londe. And that ther be chosen to theime yerly iiij. lordis spirituelx, and

Cf. ch. xv.

iiij. lordis temporelx, or in lasse numbre. And that the king do no grete thing towching the rewle of his reaume, nor geve lande, ffee, office, or benefice, but that firste his intente therinne be communed and disputed in that counseill, and that he haue herde their advises ther upon; whiche may in no thing restreyne his power, libertee, or prerogatiff. And thanne shall the king not be counseled by menn of his Chambre, of his housholde, nor other which can not counsele hym; but the good publique shal by wise men be[1] condute to the prosperite and honoure of the land, to the suretie and welfare of the kyng, and to the suretie of alle theyme that shal be aboute his persone, whome the peopull haue oftyn tymes slayne for the myscounceling of theire Soueraigne lorde. But the forsaide xxiiij^{ti} counseyllours may take noo fee, clothing, nor rewardis, or be in any manes seruice, otherwyse thanne as the Justices of the lawe may doo. Many other articles neden to be addid hereto whiche now were to longe to be remembred hereinne. Neverthelesse it is thoughte that the grete officeres, as Chaunceller, Thresorer, and prive seale, the Juges, baron[s] of theschequer, and the Clerke of the Rolles, may be of this counseill whanne they wil come therto, or whan the seyde xxiiij^{ti} and viij^{te} lordis will desire them to be with theyme.

Cf. ch. xv. 3. And for asmoche as it may be thoughte that thestablisshemente of suche a counsele shalbe a newe and a grete charge to the kyng, hit is to be considered, how that the olde counsell in Englonde, which was mooste of grete lordis that more attended to their owne matieres thanne to the good universall profute, and therfore procured hemselfe to be of the counsell, whiche was nere hand of as grette charge to the king as this counsell shalbe and no thing of suche profute. Ffor this counsell shall almost contynuelly studye and labour upon the good politike wele of the londe, as to prouide that the money be not borne oute of the reaume, and how bolyon may be broughte inne, how merchandizes and comoditees of the londe may kepe theire prices and valiwe, how estraungeres caste not downe the price of the commodites growing in the londe, and suche other poyntys of policee. And also how the lawe may be fourmely kepte and refourmed ther as it is defectife, to the grettest good and surete of the welthe of the londe that hathe bene

[1] *by* and *be*, reversed in MS.

sene in any lande. And trewly ther hath bene gevun in late daies to somme oon lorde temporell much mor lyuelode in yerly value than woll paye the wages of alle the newe counseill. And also the spirituell menne of this newe counsele shal not nede to have so grete wages as the temporell menne, whiche whanne they come to the counseill muste leve in their cuntrees oon housholde for their wyfes, children, and servauntes, or ellis carye theim with hem; whiche the spirituel men nede no[t] to do. By which consideracion the spirituel men in the court of parliament of Parys have but iij C. scutes, wher as the temporell men have iiij C.

4. It is necessarie that befor any grauntes be made by the king of any parte of his livelode, ther be first assignid particulerly certeyne lyuelode for the kinges house, for his chapell, and for his garderobe. And other lyueloode for the paymente of his courtes, his counsele, and all other ordinary charges; soo as no parte therof be restreyned tany other use, into the tyme that alle the charges be yerly payde. And yif any patente be made tany other use of any partie of that lyuelode, That that patente be voide and of noon effecte. And also that no patente be made in Inheritaunce of any partie of the kinges lyveloode, by what title so ever that it be comen to hym, withoute thassente of his parliamente, nor for terme of lyfe, or yeres countervailing terme of lyffe, withoute thaduice of his counsale, excepte suche patentes as shalbe made of fermes by the thresour[er] of Englonde, bailliffes, and other officeres having powere taprowe the kinges lyuelode. And the Chaunceller whiche shall fortune tenseale any patente contrarye hereto, leese his office and forfaite to the king all his liveloode temporell. And that the same patente be voyde. And over this that every Chaunceller have like peyne yif he enseale any patente for any other matier, or that matier be communed in the kinges counsell, and he certified of the maner and conclusion of theire deliberacion upon the same. And yif the same matier haue bene thoughte to the counsell good, the Chaunceller may write in the patente whiche he shall make therof, that it is passid bi thauyse and assente of the counsell, and ellis he shal leaue[1] these wordis, and wryte in the patente oonly that the matier hathe bene communed in the kynges counsell. Cf. ch. vi.

5. *Item:* whenne ther is lyveloode sufficiante for the paymente Cf. ch. v.

[1] MS. *haue.*

of the kinges hous, the expences therof may be alwey paide in hande, which expences shulbe thanne forthewarde of so resonable price as the iiijth parte of tholde expences of the same howsolde sholde be yerly saved. And the king shall haue therby alway the market at his gate to his grete profute, but to moche more profute of the pore peopull. And to the synguler pleasure of God, that hathe no prince excused of paying of his dettys, and namely for his vitaylles. Wherfore alle other kingis payen alway in hande for their vytaylles.

Cf. ch. xvii. 6. *Item:* it is thoughte good that the king geve noone of his offices, though it be but of parkirship, tany manne saue only to his owne seruauntes, and that euery of his officeres be sworne that he is with no man in seruice, nor hathe nor wil take of any man while he serueth the king, pencion, fee, or clothing, except oonle of the king. For thanne the king shall haue holiche the mighte of his lande, whiche is most rewlyd by his officeres as they haue bene before these daies. And the king shal mow thenne rewarde with offices, suche as oughte to be rewarded, without amenuisshing of the[1] revenues of his croune. And yit shalbe good that no manne haue ij offices, excepte the seruauntes and officers of the kynges how[s]e, whiche may haue, whanne they deserve it, a parkirship or suche a nother office as they may wele kepe be a suffisante depute. Whiche depute thanne shalbe sworne to serue noon other man saue his master that serueth the king. And in like fourme the king may rewarde his counseillours temporelx with suche offices whanne he woll. Ffor it is not like but that he woll avaunce the spirituell menne of his counseill with benefices, as they shalbe worthy.

7. *Item:* forasmoche as the king is now in grete pouertie, and may not yit susteyne thexpences of so grete an housolde as he kepte somtyme, nor he is yit purveyed of vessell and other hostilmentis of housolde honorable and conveniente for hym; And also his Costis now upon thestablishementes of his Reaume wol be gretter thanne any manne can certaynly esteme; hit is thoughte good that it woll please his highenesse to forbere all this firste yere the keping of his worshipfull and grete housolde; And be in alle that tyme in suche a sure place or places as his mooste[2] noble grace can thinke beste for his helthe and plesaunce, with lytill peopull, and withoute reasumyng and taking ageyne in all that yere of the

[1] MS. *his.* [2] MS. *mostee.*

seruauntes of his olde housolde, but suche as necessite shall cause hym. Ffor yif he take withinne that tyme ony of hemme, the remenaunte woll grugge for theire absence. And also thoo that bethe thus takyn wol not leve importune sute to haue vnto theyme all theire olde felaship, whiche shalbe noyfull and grete noye to hymselfe, and to all thoo that shalbe abowte hym for that yere.

APPENDIX C.

This piece was printed by Lord Clermont (Works, pp. 517–8) from an incomplete copy in the Phillipps collection; and is here given in full from the Yelverton MS. No. 35. It was twice transcribed by Stowe: MS. Harl. 545, f. 136; Harl. 543, f. 163 b. On its character and date see Introduction, Part III, pp. 74–7, above.

The Replicacion agenst the clayme and title of the duc off Yorke for the crownes of England and Fraunce.

Here folowith the Replicacion made agenste the title and clayme by the Duc of Yorke to the Crownes and Reaumes of Eingland and Fraunce, whiche that the said duc claymeth bi the righte and title of Sir Leonell, the thirde sone of King Edwarde the iij^de^, and by Philip doughter and heire to the said S^r^ Leonell; whiche clayme and title so made may be no trewe nor rightwis clayme nor title during the lyfe of King Henry the vj^the^ and his heires leving aftir hym, as here aftir folowing ys more openly shewed and plainle declared.

Be it knowen tall wele disposed people having will to understande the trewthe, that thoughe it so were the Righte of the Crownes of Englande and of Fraunce mighte discende vnto a wymman, as it may not, whiche is sufficiently proued in the trete therof, made by the olde knighte exiled[1], and elles it shulde partene to the kyng of Scottes, whiche discended of an elder stok by a wymman callid Seint Margarete, doughter of the king of Englande, thenne any man now claymyng the crowne of Englande. But yet for the mere Declaracion of trouthe hit is to be had in mynde, that Edward now occupying the Crowne of Englande

[1] Against this passage in the MS. is written in a later hand 'S^r^ John Fortescue, L^d^ Chief Justice of England.'

by a pretensed title, saying he ys discended therunto by the righte of a wymman called Dame Philip, doughter as he seithe to Sr Leonell of Andewerpe, elder brother to Sr John of Gante, of whom ys lynyally descended the verrey trewe Cristen prince king Henry the vjthe. The whiche Edwarde hathe no righte to the seide Crowne bi thaboveseid Dame Philip, ffor it is playnly founde in the Cronicles of Fraunce and of Seelande, that the seide dame Philip was consayved in advoutrye, and goten vpon the wyfe of the abouesseid Sir Leonell by oon Sir Jamys of Audeley knighte, whiche was steward of the housolde of the abouesseid wyfe of Sr Leonell, The whiche Sr Leonell beyng absente by the space of oo yere and halfe from his wyfe before the byrthe of the seide Dame Philip. Whiche Sr Jamys Awdlay aftirward for that offence was beheded; And Sr Leonell duc of Clarence devorsed by the lawe from the seid dame Philip his wyfe, and afterwarde wedded to the doughter of the duc of Milayne, and in that Cuntrie dyed, and in Pavy is buryed not ferre from Milayne, and sawe nevur his firste wyfe Dame Philip after with his eyen. And also she was exiled into Irelande with here seide doughter Philip. Whiche Philip had nevur foote of lande of the duchie of Clarence nor bare the armes of Englande, ne noon that discended from here be their Righte, as thei shulde have doone yif shee had bene the doughter of the seide Sr Leonell. Whiche Sr Leonell whan he was ded, and the writtis called *Diem clausit extremum* were sente oute into all the shires of Englande, they were alle retourned that the seid Sr Leonell died withoute heire or issue of his body lawfully begoten. Wherfore King Edward the iijde toke all the landes of Sir Leonell into his owne handis; And att a parliament not longe aftir declared this caas above seyde vnto all his peopull. In the whiche parliamente he entayled the Crowne to his heires Malis. And for a perpetuell witnesse that his doughters were agreed vnto the same, they came alle into the open parliament in their mantelles of estate enbrowded with tharmes of Englande, and ther openly disclaymed and renounced from theim and their heires all the right and title that thei had or mighte of possibilite haue to the crownes of England and of Fraunce. In recorde wherof they lete falle their mantelles there and departed oute of the parliament in thir gites. Lo this is a suffisent declaracion that thaboue remembred Edward that now occupieth the crowne hath no Righte therto.

APPENDIX D.

The following fragment is taken from MS. Cotton, Vespasian F. ix. f. 122. I believe it to be the beginning of Fortescue's tract 'On the Title of the House of York.' A comparison of the fragment of that tract, printed by Lord Clermont (Works, pp. 497–502) from MS. Cotton, Julius F. vi., with the *De Titulo Edwardi Comitis Marchiæ*, shows that they covered much the same ground, and the fragment here printed corresponds very exactly with the beginning of the latter work. The plan here commenced is carried on in Lord Clermont's fragment. Between the two fragments would come the discussion of Stephen's and Henry II's title to the throne, and of the claim of the Scottish kings to the English succession, as descended from Margaret, sister of Edgar Atheling and wife of Malcolm Canmore. This missing portion may be practically restored from the 'Declaracion upon Certayn Writings,' Works, pp. 525, 537, where this tract seems clearly to be cited for the purpose of being refuted. The words enclosed in brackets are my own conjectural restoration of the lacunæ of the MS. I have added in the margin references to the pages of Lord Clermont's edition of Fortescue's works, where passages may be found more or less parallel to those here printed.

A simple maid of the Realm [of Englonde now] in exile within the Realm of [Scottis, knowyng the] Title by the which Edwarde late [erle of Marche claymeth the] forsaid Realme of Englonde to [be pretensed and fals,] and dredyng that therby the noble [realme of Englonde and the] most noble Christian prynce Henry [the vjth who hath] peasibly raigned xxxviij yeres [vpon the said Realme] might be defamed or hurte; and al[beit the worshipful] councell of the said kynge, wole not [by aduyse of the] prynces and other greate lordes of [the said councell] take upon theym to putte in writy[ng the said kynges] title which is vndoubted to all the [world]; The said simple persone not presumy[ng to declare the said] title, which nedeth no declaration, [yet that he may shewe] and declare the Insufficiencye of the [forsaide clayme] hath furst putte in writyng the forsaide pre[tensed title, and then] aunswered to the same, as in articles hereaftyr fo[lowyng may] appier. Cf. Works, p. 63*.

Here foloweth the title which Edwarde Erle of Marche pretendeth[1] to the Crow[ne] of Englond and the Realme.

Cf. Works, p. 63*. The saide Edwarde sayth that he is son to Richard, son to Anne, doughter to Roger, son to Philip, doughter to Lyonelle, eldest brother to Edward, somtyme prynce of Walys ffadr to Kyng Richard the second, which dyed withoute issue; and he sayth that kynge Henry vjth is son to kyng Henry the vth, son to kyng Henry the iiijth, son to John, somtyme Duke of Lancaster, ij^{d} brother to the said prynce, ffadr to the said kyng Richard. And soo bicause he is comon of the older brother of the said late prynce, and the [said kyng Henr]y the vjth is comon of the ij^{d} brother of the same prynce, [he sayth that] he hath right to the realm and Crowne of Englond, [as next heyr] to the said kyng Richard, and therfor he is entred [now late] vpon the said kyng Henry the vjth and hath [putte hym] oute therof, and also hath crowned hymself kyng [of the said] Realme of Englond.

The Aunswer to the forsaid title made after the custom and lawe of the realme of Englond.

Cf. Works, pp. 64*, 505. [Yt is shewed] openly by the forsaid title that the said Kyng Henry [the vjth is nex]t heyr masle to the said kyng Richard, and

Cf. Works, p. 500. also [next to hym of his] blode; and that the said late erle connexeth his [discent and succession] by meanes of ij women, that is to saye Philip and Anne [ther as n]o woman by the lawe and custom of that londe maye [or can enher]ite the crowne therof; for yt is descendable only to heyres masles, and by such heyres only that londe hath ben enherited, and neuer by ffemasles, sithen the conquest therof; nor bifor, sithen the kynges theroff have ben anoynted, as by example of some of the discent and succession of the said crowne, fallen as well sithen the conquest as bifor, specified in ij articles next folowyng yt may openly appier.

Cf. Works, pp. 65*, 505, 537 f. Kyng Henry the furst, which was son to the conquerour of the said londe, had no issue masle, but he had a doughter called Mawde, which was Empresse of Almaigne, and after the deathe of the Emperour her husband she was wedded to Geffrey Plantagenette, erle of Angeoye, by whom she had a son called Henry Fitz Empresse. The said erle of Angeoye dyed, and also the forsaid Kyng Henry the furst dyed seased as well of the Realme of Englond as of the[2]

[1] MS. *pretended*. [2] The last eight words are crossed out in the MS.

Glossarial Index.

A.

ablements, habiliments, 138. 10; abillementis, C; abylymentes, D^1.

advoutrye, adultery, 354. 8.

Affrike, Africa, Avfrak, C.; Awfrik, Y.

almes, alms, charity, 155. 22; **almesse**, 156. 7: A.S. ælmesse.

Almeyn, Germany, 115. 8; **Almaigne**, 356. 31.

also, as, 145. 8, and fq.: A.S. eal swá.

alsowell, as well, 124. 11.

altheyr, gen. pl. of 'all'; 'our altheyr good'=the good of us all, 156. 4; althere, Y. H^1; aller, D^2.

amenisshe, diminish, 349. 26; **amenuisshing**, 352. 18: Fr. amenuiser.

amortyse, to amortise, tie up lands in mortmain, 154. 24; v. note a. l.

Andewerpe, Antwerp, 354. 3.

Angeoye, Anjou, 356. 33.

apon, upon, 123. 7, 12, and fq.

aprowe, improve, 351. 25.

arbitrment, discretion, absolute power, 113. 6.

arrerages, arrears, 143. 24.

Arrogoners, men of Arragon, 115. 7; Arragoners, C, Y.

arted, obliged, compelled, 114. 27; 119. 21: Lat. artare, artatus.

aught, awght, ought, 127. 15; 139. 18; pl. **awghton**, 147. 7.

Authenences, Athenians, 150. 6; Athenenses, C, Y, D^2; Athenes, Lb; Athenyes, D^1.

ayen (adv.), again, 121. 20.

ayen, ayenest, ayenste (prep.), against, 121. 17; 130. 1; 155. 7.

B.

bauderike, baldrick, belt, 125. 16.

bayille, district of a bailiff, baliwick, 151. 4; bayllye, Lb: v. critical notes, a. l.

baylyff, bailiff, 151. 3; baylly, Lb, D^2; baily, C, H^1; bayle, Y.

be, by, 141. 9.

be, ben, been, 138. 31; 136. 1.

ben, byn, pres. pl. of 'to be,' 116. 5: A.S. beon.

be sene, beseen, furnished, equipped, 124. 11.

be sit, bi sit, to become, befit, 124. 23; 125. 22; pt. t. **be sate**, 136. 8; **besatte**, 136. 15.

bie, to buy, 124. 33; 125. 13; **biynge**, buying, 132. 21.

bien, 113. 16; v. ben.

bith, pres. pl. of 'to be,' 110. 27, and fq.; **beth**, 156. 3: A.S. beoð.

Boeme, Bohemia, 139. 9; Beame, C, Y, D^2.

braggers, bragers, brokers, 152. 34; 153. 4; broggers, D^2, H^1. Though 'brogger' is only a corrupt form of 'broker' they came to be regarded as distinct words:

'every broker, brogger, and huckster.' Hist. Charters of London, p. 200.

Bretons, Britons, 115. 17; Brutons, D^1; Brytons, D^2; Britons, C.

brocage, brokerage, management, influence, 144. 18; v. note, a. l.; brochage, D^1.

brotherryn, brethren, 136. 13; brethern, C, Lb; brotherne, D^1; britharne, H^1; **bretheryn**, 153. 15.

bullyon, bullion, 178. 3; bolyne, D^1; bolyon, Lb; bolion, Y.

busses, bushes, 141. 11; busshes, C, Y.

but yff, unless, 138. 8, and fq.

by, bye, to buy, 118. 11; 132. 14.

by hold, beholden, 152. 24; be holdyng, C, D^2.

C.

carrikke, a kind of ship, 123. 15: Low Lat. carrica, a ship of burden.

cete, city, 129. 27.

chese, chose, 112. 19.

chevisaunce, agreement, composition; especially a composition by which money is obtained, a loan, 118. 17: O. Fr. chevissance.

childeryn, children, 109. 19; 110. 12; childir, childyr, Lb; chieldren, C; **childirren**, 115. 25; **childeren**, 117. 11.

come, came, 133. 18: A.S. cóm.

comened, communed, deliberated, 150. 17.

Common Place, Common Pleas, 146. 18.

comunalte, community, 112. 13, 17; 124. 19: O. Fr. communalté.

confedre, confederate, conspire, 139. 29.

contre, contray, country, district, 141. 7, 12.

córodie, an allowance of food, etc., out of monasteries, 153. 24; pl. **corodeis**, 146. 2: v. note a. l.

couude, could, 133. 5, and fq.; cowde, C, Y; couth, Lb.

covent, convent, monastery, 155. 11.

creaunce, credit, 118. 12: Fr. créance.

creauncers, creditors, 118, 18: Fr. créancier.

crokyd, crooked, 114. 30.

D.

defende, to forbid, 133. 2: cf. Fr. défendre.

defende, defended, 115. 21.

delibre, deliberate, 147. 35; **delibered**, 143. 31.

dell, deal, part, 152. 4; deale, D^1; dele, D^2.

demeynynge, behaviour, course of action, 130. 3.

demure (sb.), stay, sojourn, 124. 15: O. Fr. demore.

desime, dessime, a tenth, 140. 2; 139. 32; dismes, C, Y, D^2; dyames, D^1; diemes, H^2; dyeme, D^1; dieme, Lb; deisme, Y: Fr. dixième.

discribed, enrolled, 149. 16: v. note a. l.

dispend, to expend, 118. 14.

dispenses, expenses, 119. 7.

distyngued, distinguished, 110. 20; distincted, C.

diuersen (vb.), to differ, 109. 7.

do, pt. p. = done, 155. 22.

dussepers, 131. 24: v. note a. l.

E.

egall, equal, 110. 27; 111. 10: Fr. égal.

ellis, otherwise, else, 117. 18; 126. 27.

enbrowded, embroidered, 354. 32.

encresse, increase, 134. 9; **encressynge**, 133. 6.

entendet, attended, 145. 13.

entredid, treated, dealt with, 135. 6; cf. tredid; **entreted**, 140. 11.
equepolent, equally powerful, 130. 30.
erly, yearly, 120. 9; written **yerely** 114. 9, where D^1 has erly. So in 116. 13; 138. 25, D^1 has ere for 'year.'
eschekquer, **exchequier**, exchequer, 122. 12; 148. 25; escheker, D^1, D^2; eschequer, C.
especialiteis, particulars, details, 125. 23.
euery, subst. = every one, 151. 17; everyche, Y.
exorbitant, out-of-the-way, extraordinary, extravagant, 123. 26: O. Fr. exorbitant.
exquisite, sought out, refined, extraordinary, 119. 21.
eyde, aid, 126. 3.
eyegally, equally, 133. 8; cf. egal.
eyen, eyes, 354. 18.
eyres, heirs, 136. 2; **heyres**, 136. 10.
eytikes, ethics, 119. 29; ethyks, D^1; etikes, C, Y, D^2; etykes, Lb.

F.

fauctours, favourers, supporters, 129. 29: Lat. fautor.
ffeed, paid, salaried, 150. 25; feodid, C.
ferde, terrified, p. pt. of 'to fear,' used actively, 110. 5; aferd, C, Y, H^2.
ferre, far, 123. 19.
ffloute, fleet, 123. 7, 16; floote, C, Y; flode, D^1; flote, D^2.
fille, fell, 347. 21.
forthwarde, 'than forthwarde,' thence forward, 147. 21.
fourmely, firmly, 350. 37.

G.

gabell, originally the name of any tax, but appropriated specially to the tax on salt in France, 131. 25.
gasteful, frightful, 110. 6; cf. ghastly.
getun, p.p. of 'to get,' 143. 3; goten, C, Y; **goton**, 136. 23; **geyten**, 154. 13; **gotyn**, 154. 22.
gite, a gown, 354. 37.
goo, gone, 138. 34.
grobbyng, grubbing, 141. 10.
groche, to grudge, 132. 24, and fq.; written also **grucch**, 114. 8; **grugge**, 349. 13.
Guyne, Guienne, 131. 21.

H.

ham, them, 129. 7, and fq.
hande, 'paid in hande,' = paid with ready money, 120. 25; 'hade it in hande,' 136. 25.
has, as, 117. 15.
hausyn, hosen, pl. of hose, 114. 19.
hem, them, 110. 4, and fq.; **hemme**, 353. 2.
Heroude, Herod, 117. 9; Eroode, Y; Erraud, Lb, D^1; Haraulde, D^2; Herowd, C.
hit, it, 127. 29.
holl, **hole**, whole, 134. 13; 149. 24.
hollych, **holliche**, wholly, 133. 26; 152. 7.
hostilmentis, household furniture, utensils, 352. 30.
huyr, her, 131. 16.
hym, them, 143. 2, 3.

I.

i now, enough, (also written **ynough**, **ynoghe**, q.v.), 119. 34: A. S. genóh.
is, his, 129. 27, and fq.

J.

jakke, jack, coat of mail, 138. 1; yackes, D^1.
jopardie, jeopardy, 125. 6; jupartie, C: O. Fr. jeu parti.

juelles, juels, jewels, 148. 4; 125. 16; yuelles, D^1; iouelx, Lb; iuelx, jeuelx, Y.
justified, administered, governed, 112. 22.

L.

Lacedemonies, Lacedæmonians, 150. 5; Lacedemons, D^1; Lacedemeneys, D^2; Lacedemonees, Lb; Lacedemonyes, C, Y.
lafte, left, 142. 26.
lafull, lefull, lawful, 139. 20; 110. 17.
lake, lack, 119. 15.
lasse (vb.), lessen, 349. 26.
lemitted, settled, fixed, appointed, 128. 10; lymyte, Lb; lymyted, Y, D^1.
lerned, taught, 135. 14.
lese, lose, 155. 18; **lesynge**, 138. 6.
leuer, liefer, rather, 119. 11.
ligates, 124. 17. So L, Lb; legates, al.
like, lyke, likely, 134. 1; 139. 8.
likely, well-favoured, personable, strong, 115. 4.
likenes, lykennes, likelihood, 122. 29; 131. 3.

M.

maid, 355. 20; seems to be masculine = man: ? cf. Icel. mögr.
manasheynge, menacing, 138. 34; **manassynge**, 110. 5.
maneres, manors, 133. 24.
mansuete, refined, civilized, 112. 12: Lat. mansuetus.
maugre, in spite of, 133. 1: O.Fr. malgre, maugre.
meryer, merrier, 155. 25; myrrier, C.
mich, moch, moche, much, 131. 13; 139. 15; 147. 25.
mo, more (of number), 119. 30, and fq.
modered, moderated, 143. 21.
mowe, to be able to, 121. 4, and fq.; Mod. Eng. may; pt. t. **mought**, 130. 27; Mod. Eng. might. In 133. 32 we have **myght**, where C has mowght.

N.

namely, especially, 130. 26, and fq.
ner, nor, 133. 32.
nere hande, nearly, almost, 117. 32; 129. 8.
nev, i. e. neu = new, 130. 14.
non suyrte, insecurity, 154. 15; cf. nown poiars.
nor the lesse, 122. 34; nathe lesse, Lb; neuer the les, C, Y.
nown poiars, non-powers, 121. 9. Cf. such compounds as non-age, non-suit, etc. **non-poiar**, 150. 9; noun powers, C; noon poweres, Y.
noye, trouble, annoyance, 353. 5.
noyfull, troublesome, annoying, 353. 5.

O.

odre, other, 125. 30.
on, one, 130. 21, and fq.; **oo**, 354. 11; **oon**, 347. 24.
onis, once, 121. 20, and fq.
oonle, only, 352. 14.
oonys, once, 156. 22.
onynge, uniting, 112. 21.
or, ere, before, 144. 27.
ordenyd, ordained, 112. 21.
ordinarye, a book of rules, precedents, &c., 149. 4. (Three MSS. read *ordynal*.)
owed, owned, 136. 3.
owith, ought, 127. 7, 14 (in the latter passage it alternates with **aught**).
owthe, oath, 146. 14.

P.

parcell, part; strictly a small part, 123. 2: Fr. parcelle.
partene, pertain, belong, 353. 27.

partye, part, 149. 11; **parte**, 155. 9; pl. **parties**, 133. 16, 17.
peas, **pease**, peace, 119. 27; 153. 6; **peax**, 348. 19.
pene, penny, 118. 14, 16; **peyne**, 135. 20.
perdurable, lasting, 142. 23.
place, v. Common Place.
poiar, power, 110. 28, and fq.; cf. pover.
police, policy, 148. 11; **pollycye**, 148. 1.
pondage, poundage, 122. 34: Low Lat. pondagium.
pouere, **pouerer**, **pouerest**, poor, etc., 151. 3; 118. 25, 26; **poure**, 120. 2; **pore**, 137. 17.
pover, power, 121. 3; cf. poiar; also written **power**, 121. 4.
president, precedent, 134. 17.
purvey, to provide, 122. 5; 128. 21: Fr. pourvoir.

Q.

quaterimes, a tax of 25 per cent. on wine, hence the name, 131. 26; v. note a. l.
quinqueniale, lasting for five years, 140. 2; quinquinall, D^2.
quinsime, a fifteenth, 139. 32; 140. 2: Fr. quinzième.

R.

redely, readily, promptly, 122. 15.
remenante, remainder, remnant, 128. 30.
resorte, revert, return, 142. 25.
ressnable, reasonable, 132. 16; cf. **vnresnoble**, 133. 6; but, **resonable**, 136. 5; **reason**, 138. 28.
rychesse, riches, 142. 9. In 144. 15 we have **riches**, where Lb, D^2, have richesse, and C, richesses: Fr. richesse.
rygoursly, rigorously, 132. 25.
ryped, ripened, 148. 18.

S.

sadanly, suddenly, 126. 3; cf. soden.
sadde, serious, discreet, 348. 5.
sane, = sayen, pres. pl. of 'to say,' 152. 9; sayn, D^1; sayen, C, Y, Lb, D^2.
saudan, **saudayn**, sultan, 135. 11, 20: O. Fr. soudan.
scute, a crown (coin), 114. 25, 26.
seen, = sayen, pres. pl. of 'to say,' 117. 12.
selde, **seldon**, seldom, 141. 26; 114. 15; sielde, C; sylden, D^1; selden, Y, Lb, D^2; sielden, Y.
sende, sent, 143. 30.
serpes, cypress, i. e. fine linen, 125. 15 (see note a. l.). So L, D^1, Lb; serpis, C, Y; serples, D^2.
sertanly, certainly, 140. 22.
shotynge, shooting, 138. 12; 151. 7; sutyng, suetyng, D^1; sheetyng, C.
sithyn, since, 110. 1, and fq.: A.S. siþðan.
sle, to slay, 111. 25; scle, D^2; pt. t. **slowe**, 117. 10; slough, C; sclewe, D^2: A. S. sleán.
soche, such, 140. 15.
soden, sudden, 120. 12, 15; also written **sodayne**, 125. 33; cf. sadanly.
spice, species, kind, 144. 3: O. Fr. espice.
sprites, spirits, 121. 10.
stokk, to root up, 141. 10.
sturred, stirred, 139. 4; stired, C; stered, Y.
subget, 116. 22; **subgett**, 130. 30; **subiet**, 116. 21; **subgectes**, 117. 15; **subgettes**, 117. 25; **sugettes**, 116. 10; **subiectes**, 117. 9; **subiecttes**, 116. 12; **subgiettes**, 348. 4. It will be observed that with two exceptions these various spellings occur within the limits of two pages.

suffre, suffer, 152. 14; soeffre, C.
suirte, security, 130. 25; cf. unsuyrte; **surete**, 140. 18.
syngular, synguler, special, 152. 23; 124. 2.

T.

take, taken, 131. 11.
tayles, entails, 136. 4.
tayles, taxes, 109. 9; 113. 21: cf. Low Lat. tallia, tallagium.
terable, terrible, 141. 27.
thai, thaim, thair, = they, them, their, fq.; **þam**, 136. 19; **theyme**, 353. 4.
than, then, 124. 1, and fq.; also written **then**, 125. 25. So **whan** = when, 130. 26.
the, them, those, 122. 10 (perhaps a mistake for **tho**, q.v.).
theis, thighs, 114. 21; thies, Lb; thyes, D^2, H^2; thighes, C, Y.
theis, these, 124. 4; **thes**, 138. 27; cf. thies.
then, than, 144. 9; but **than**, 129. 5.
ther, their, 114. 21.
thies, these, 121. 29, and fq.; cf. theis.
tho, then, 109. 23, and fq.
tho, those, 110. 19, and fq.; **thoo**, 353. 3.
thrugly, throughly, thoroughly, 153. 9.
to gedur, to gedre, together, 142. 1; 145. 11; to guyder, Y; to giders, Lb; to gethers, D^1; to gydre, C.
toke, taken, 139. 1.
trappers, horse-trappings, 125. 21.
tredid, treded, treated, 109. 15; 145. 9; but **treted**, 145. 26.
treis, trees, 141. 11.

U, V.

vessail, plate, gold or silver, 125. 19.
viage, journey, voyage, 124. 15.
understande, understond, p.p. understood, 130. 23; 154. 2.
undoubtably, indubitably, 134. 21.
unite, unyed, united, 112. 15, 17.
vnneth, scarcely, with difficulty, 114. 12; unnethes, Lb.: A.S. unea̋e.
vnsuyrte, insecurity, 119. 3; cf. suirte.
vser, usury, 118. 27: Fr. usure.
vttermest, outermost, 114. 18.

W.

warr, vb. act. to make war upon, 130. 21. C, Y, D^1, D^2, insert various prepositions, 'upon,' 'ayenst,' 'with,' after the verb: cf. wiren.
welthe, wealthy, 115. 29; 348. 20; **welthy**, 149. 27.
werely, verily, 117. 3; **verely**, 153. 9.
werre, war, 123. 5; pl. **werrys**, 348. 12.
whom, home, 153. 18.
wiren, to make war upon, 348. 10: A.S. werrien; see warr.
with, against, 144. 21: A.S. wi̋.
wone, dwelling, home, possessions, 156. 8.
wonned, woned, wont, 121. 32.
woxe, waxed, grew, 348. 2.

Y.

yefte, gift, 153. 10; **yeftis**, gifts, 121. 25. In 119. 9 we have **giftes**, where D^1 has yftes.
yeve, to give, 153. 23; **yeuen**, given, 152. 20.
yif, if, 347. 12.
yit, it, 352. 19.
yit, yet, 352. 29.
ynoghe, ynough, 122. 26; 113. 9: cf. i now.

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